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1875 TO 1899,

AND

FORMS AND NOTICES ISSUED THEREUNDER,

With Notes and Cases;

TOGETHER WITH AN APPENDIX CONTAINING THE OTHER ACTS RELATING TO ADULTERATION, CHEMICAL NOTES, ETC., ETC.

BY

SIR WILLIAM J. BELL, LL.D.,
Of the Inner Temple, Barrister-at-Law,

H. S. SCRIVENER, M.A., OXON.,
Of the Middle Temple and South Eastern Circuit, Barrister-at-Law,

AND

C. F. LLOYD,
Of the Inner Temple and Midland Circuit, Barrister-at-Law.

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SINCE the publication of the Third Edition of this Book a large number of cases under the Sale of Food and Drugs Acts have been decided in the Superior Courts of England, Scotland, and Ireland. This fact, and the making of several new Orders and Regulations under the Acts by the Local Government Board and the Board of Agriculture, have rendered necessary the publication of a Fourth Edition. All the matter appearing in previous Editions has been carefully revised, and it is believed that every reported decision of any practical value since the year 1875 is dealt with in the Notes.

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INTRODUCTION.

The bulk of the law relating to the adulteration of food is contained in the following Acts :

The Sale of Food and Drugs Act, 1875.

The Sale of Food and Drugs Act, Amendment Act, 1879.

The Margarine Act, 1887.

The Sale of Food and Drugs Act, 1899.

Besides the above, the Bread Acts of 1822 and 1836, relating to the adulteration of flour and bread, are still in force, and their main provisions will be found set out in the Appendix, *post*, but prosecutions for adulteration under these Acts have gradually become more and more rare, owing mainly to the fact that offences against them are also punishable, and with a heavier penalty, under the Sale of Food and Drugs Acts, and that, while the absence of *mens rea* is a good defence under the Bread Acts, it is not so under the Sale of Food and Drugs Acts.

There are also certain commodities—tea, coffee, and beer—with respect to the adulteration of which certain powers are given to the Commissioners of Customs and the Commissioners of Inland Revenue

under the Revenue Acts. The material portion of the enactments under which these powers are exercised are given in the Appendix, *post*. Section 2 of the Adulteration of Hops Act, 1733, the Adulteration of Seeds Acts, 1869 and 1878, and the Oil in Tobacco Act, 1900, are also set out in the Appendix.

The Fertilisers and Feeding Stuffs Act, 1893, which was included in the last two editions of this book, and has been retained in the Appendix to the present one, is a kindred Act to the Sale of Food and Drugs Acts, but deals solely, as its title shows, with the sale of agricultural fertilisers and food for cattle. At the present time (October, 1903) a departmental committee, appointed by the President of the Board of Agriculture is considering the sufficiency of this Act in its present form, and the advisability of further legislation on the subject.

With these preliminary observations we may pass at once to a more detailed examination of the Sale of Food and Drugs Acts themselves. These, by section 28 of the Act of 1899, are styled collectively "The Sale of Food and Drugs Acts, 1875 to 1899."

ADMINISTRATION.

The Acts are administered by the local authority of each district, and concurrent powers in certain cases are given to the Local Government Board and the Board of Agriculture. In the case of imported articles the administration of the law is in the hands of the Commissioners of Customs. The Local Government Board have also certain powers

enabling them to compel a negligent local authority to perform its duties. See sections 10, 13, and 20 of the Act of 1875, and sections 1, 2, and 3 of the Act of 1899.

Definitions.

The Act of 1875, which is the principal Act, and to which the other three are supplementary, commences with the repeal of the previous enactments relating to food adulteration for which it was substituted, the last of which was the Adulteration of Food and Drugs Act, 1872. It then proceeds (section 2) to a definition of the two words contained in its title—"Food" and "Drug." The definition of "Food" as it originally stood was "every article used for food or drink by man other than drugs or water," but owing to a decision of the High Court in 1894, by which it was held that articles used in the preparation, flavouring, etc., of food, but not used by themselves as articles of food, were not within the scope of the Act, the definition was, upon the recommendation of the Select Committee of 1894-1896 on Food Products Adulteration, extended by the addition of the words, "and any article which ordinarily enters into or is used in the composition or preparation of human food; and shall also include flavouring matters and condiments" (section 26 of the Act of 1899). "Drug" is defined as including "medicine for internal or external use."

PRINCIPAL OFFENCES.

Sections 3 to 9 of the Act of 1875 create two main classes of offences which are punishable under the Acts:

(1)—(*a*) The mixing of injurious ingredients with any article of food or drug sold or intended to be sold (sections 3 and 4).

(*b*) The selling of any article so mixed (sections 3 and 4).

(2)—(i) The selling of any article of food or drug which

(*a*) is inferior in nature, substance, and quality to the article demanded by the purchaser (section 6).

(*b*) being a compounded article of food or drug, is not compounded in accordance with the demands of the purchaser (section 7).

(ii)—(*a*) The abstraction from any article of food sold or intended to be sold of any part of it, so as to affect injuriously its quality, nature or substance, without making disclosure of the alteration (section 9).

(*b*) The selling of any article so altered (section 9).

The main differences between the two classes of offences are, that in the case of (1) it must be shown that the article is injurious to health (or, if it be a drug, that its quality or potency has been injuriously affected), whereas in the case of (2) the fact that the addition, abstraction, or whatever it may have been was harmless, is immaterial; that in the case of (1) guilty knowledge is an essential element of the offence, whereas in (2) it is not; and that the penalty under (1) is, of course, much heavier.

That offences of the first class are comparatively rare nowadays, is shown by the following extract from the report of the Select Committee of 1894—1896:

"There is reason to think that the adulteration of food with substances injurious to health has diminished greatly during recent years. Proceedings have rarely been taken under section 3 of the Sale of Food and Drugs Act, 1875, in respect of this class of offences. No doubt this may partly be accounted for by the fact that it would in no case be an easy matter to obtain convictions under the section referred to, because it is necessary to prove that the adulteration is dangerous to health, and that the person charged with the adulteration has guilty knowledge of the same. Moreover, it is to be borne in mind that the punishments which may be inflicted for offences of this character are more severe than those imposed by the provisions of the Act which relate to adulteration with harmless substances. But whatever may be the cause of the diminution of this description of offences, it is satisfactory to note the same."

For the second class of offences, section 6 is the all-important section, and under it the bulk of the prosecutions under the Sale of Food and Drugs Acts

are instituted. Although its provisions have been made the subject-matter of a number of reported cases, the tendency of the decisions throughout has been to widen, rather than to curtail, its scope. It is now well recognised that the primary object of these Acts is not so much the punishment of those who deserve to be punished, as the protection of the public at large, and, therefore, the seller of an adulterated article is liable to a conviction under this section, even though he may be innocent of any attempt to cheat his customers, and though the actual offender (who can, of course, also be punished) may be a servant, or even a person over whom he has no control.

Section 7, which refers to compounded articles, is little used, inasmuch as an offence against its provisions is equally punishable under section 6.

Section 9 deals with abstraction alone, and was specially designed to meet the case of the removal of cream from milk. Its provisions are more stringent than those of section 6, and certain defences which are available under section 6, as will be seen presently, are not available under section 9.

The numerous other offences created by the Acts are dealt with separately at p. xxxvii., *post*.

DEFENCES.

Assuming that there has been an actual sale to the prosecutor of the article in question, the defences to a prosecution for what has been termed the first

class of offences (under sections 3 and 4), appear to be (1) that the article was not intended to be sold as an article of food or a drug, as the case may be; (2) that if an article of food it is not injurious to health, or if a drug, that its quality or potency has not been affected; (3) that the defendant had no knowledge of the adulteration, and could not with reasonable diligence have obtained such knowledge; (4) the defence of a warranty from the wholesale dealer under section 25, might also be a good defence to a prosecution for "selling," though it would not be to one for "mixing" (see note (*b*) to section 25, *post*, p. 69). But, in practice, it would be unnecessary to plead the warranty as a technical defence under section 25, because a warranty would be strong evidence of absence of guilty knowledge, and would tend to establish defence (3) above. The giving at the time of the sale of a descriptive label (section 8) on or with the article sold, indicating the presence of injurious ingredients, would afford no defence, neither would the giving to the purchaser notice of the adulteration at the time of sale by any other means (*e.g.*, by a verbal communication or by a placard exhibited in a shop), protect the seller. Moreover, a master is liable for the acts of his servants under these two sections, unless he has exercised a reasonable amount of supervision over them.

The defences to the second class of offences are more numerous, but, in the first place, it is important to observe that absence of guilty knowledge is

no defence in these cases, and that a seller may be made liable for the unauthorised acts of servants, and even for acts which he has expressly forbidden or for acts of third parties over whom he has no control. The defences to a prosecution under section 6 (assuming, as before, that there has been an actual sale) are (1) that the article sold was the same in nature, substance, and quality as the article demanded by the purchaser, or, in other words, that the purchaser got what he asked for; (2) that the defendant is protected by any of the exceptions contained in sub-sections (1) to (4) of section 6 (*post*, pp. 9 and 10); (3) that the article was sold with a descriptive label stating that it was mixed with an ingredient not injurious to health (section 8); (4) that notice was given in some other way to the purchaser at the time of the sale, that the article was mixed, diluted, or of an inferior quality, etc. (see note (*b*) to section 6, *post*, p. 13); (5) that the defendant bought the article in the same state as sold, and that he bought it with a warranty, and had no reason to believe that it had undergone any change (section 25). In the case of spirits diluted with water, there is also a special defence under section 6 of the Act of 1879, that the spirit has not been reduced more than a certain degree below proof.

It should be noted that it is no defence to prove that the defendant bought the article in the same state as it was in when he sold it, and that he had no reason to believe that it had undergone any change, unless he can also produce a sufficient

warranty from the person from whom he bought it; and that, conversely, a warranty by itself is no defence, unless the other requirements of section 25 are complied with. As to what amounts to a warranty, see note (*c*) to section 25, *post*, p. 70.

Section 7, as has already been pointed out, has practically fallen into disuse.

In the case of a prosecution under section 9 for abstracting an ingredient from an article of food so as to affect injuriously its nature, substance, or quality, the defendant must show that he made a "sufficient disclosure" (in the words of the section) of the alteration. The defence of a descriptive label under section 8 is only available in the case of those sections which precede it, and therefore a descriptive label does not necessarily furnish a defence under this section, though it would of course do so if it amounted to a "sufficient disclosure." In other words, if a descriptive label is relied upon at all, it must satisfy the requirements of section 9—not of section 8.

It is no defence to a prosecution under this section for the seller to allege that he had no knowledge of the alteration at the time of the sale. As to how far a written warranty affords a defence, see note (*b*) to section 25, *post*, p. 70.

OTHER OFFENCES.

The sale of margarine as butter is prohibited by the Margarine Act, and a number of stringent

restrictions are placed upon the manufacture, carriage, importation, and sale of margarine by that Act and the Act of 1899.

The Acts also create a number of subsidiary offences, such as refusing to sell to an officer charged with the execution of the Acts (section 17 of the Act of 1875, and section 4 of the Act of 1879); obstructing an officer in the execution of his duties (section 16 of the Act of 1899); giving a false warranty, etc. (section 27 of the Act of 1875, and section 20 (6) of the Act of 1899); using a milk cart or can not inscribed with the name of the owner (section 9 of the Act of 1899). These offences do not come within the scope of this introduction; they are fully dealt with in the notes to the sections creating them.

APPOINTMENT AND DUTIES OF ANALYSTS.

Analysts are appointed by the local authorities, and are bound, on payment of their fee to analyse any article of food, etc., submitted to them, either by a public officer or by a private individual (section 12 of the Act of 1875), and to give a certificate in the prescribed form (section 18). They also have to submit quarterly reports to the Local Government Board (section 19).

Government analysts.—The Government Laboratory, which is under the control of the Commissioners of Inland Revenue, acts as a Court of Appeal in

doubtful cases. Its aid can only be invoked through the court before whom proceedings under the Acts are taken (sections 22 of the Act of 1875 and 21 of the Act of 1899).

TAKING OF SAMPLES, ETC.

Public officer.—Any of the public officers mentioned in section 13 of the Act of 1875, and sections 2 and 3 of the Act of 1899, may purchase in the ordinary way a sample of any article (section 13 of the Act of 1875), or may procure at the place of delivery a sample in the course of delivery from the vendor to the purchaser (sections 3 of the Act of 1879, and 14 of the Act of 1899), or under section 10 of the Margarine Act, they may take, without purchase, a sample of butter exposed for sale, and in the case of imported articles the Commissioners of Customs have power to take samples without purchase (section 1 of the Act of 1899). Any person who refuses to sell to a public officer, or obstructs him in the exercise of these powers, is liable to a penalty.

When the sample has been obtained, the formalities prescribed by section 14 of the Act of 1875, or sections 1 or 2 of the Act of 1899, as the case may be, must be observed, unless the sample is one taken in course of delivery. In that case, the sample need not be divided in accordance with section 14 of the Act of 1875, but if it is a sample of milk or margarine, a portion of it must be forwarded to the consignor.

Private individual.—A private purchaser has none of the compulsory powers above mentioned. He can only purchase in the ordinary way, and cannot compel the vendor to sell. But having purchased an article, he need not go through any of the formalities prescribed by section 14 of the Act of 1875.

ANALYSIS.

The public officer must then send the sample obtained by him to the public analyst, who will issue his certificate (section 13) in the form prescribed by the Act. The production of such a certificate is a condition precedent to any further proceedings.

If the article has been purchased by a private purchaser, it is doubtful whether an analysis need be made, or a certificate obtained (*Butler* v. *Wilson*, [1896], *post*, pp. 43, 48). For instance, if at the time of the sale, the seller admitted that the article purchased was adulterated, the private purchaser could probably prosecute him without any further formalities, and obtain a conviction on that admission. As a matter of fact, prosecutions by private individuals are almost unknown, owing to the expense and trouble involved.

PROSECUTIONS.

Prosecutions under the Acts are almost always instituted by one of the public officers mentioned in section 13 of the Act of 1875, and sections. 1, 2 and 3 of the Act of 1899. But it is well established that

private persons can also take proceedings to enforce some if not all of the provisions of the Acts (see *Buckler* v. *Wilson*, [1896], *post*, pp. 43, 48, and *Connor* v. *Butler*, [1902], *post*, p. 56).

The person prosecuting must, within twenty-eight days from the time of the purchase (section 19 of the Act of 1899), lay an information before a magistrate, who may, if he thinks fit, grant a summons, returnable within fourteen days from the day of service. The summons must contain particulars of the offence alleged, and a copy of any analyst's certificate obtained must be served with it.

If the defendant desires to use the certificate of any analyst by way of defence, he must send a copy of it to the prosecutor at least three clear days before the return day of the summons, and if he relies upon the defence of a warranty, he must, within seven days after the service of the summons, send to the prosecutor a copy of the warranty, with the name and address of the person from whom he received it, and must also give notice to the giver of the warranty (sections 20 and 22 of the Act of 1899).

The summons is then heard in the ordinary way. The only special features are (1) that the certificate of a public analyst is sufficient evidence, either for the prosecution or the defence, of the facts therein stated, unless the other party requires the analyst to be called (section 21 of the Act of 1875, and section 22 of the Act of 1899); (2) that the Court may, if it thinks fit, and must if requested, send a sample to the Government Laboratory for further

analysis (sections 22 of the Act of 1875, and section 21 of the Act of 1899).

A right of appeal to quarter sessions is given by section 23 of the Act of 1875.

PENALTIES.

The penalties which can be inflicted vary considerably according to the gravity of the offence, and provision is made by sections 3 and 4 of the Act of 1875, and section 17 of the Act of 1899 for the infliction of heavier punishment upon persons who have been previously convicted. In some districts the operation of the Acts has been greatly impeded by the excessively light penalties imposed by the local magistrates (see circular letter from the Home Office to clerks to justices at p. 171, *post*).

REGULATIONS AND ORDERS.

Since the publication of the last edition of this book several new Regulations and Orders have been made by the Local Government Board and the Board of Agriculture under powers conferred upon them by the Act of 1899. They provide as follows :

Wholesale Dealers in Margarine.—An order of December 22nd, 1887, prescribed the manner in which margarine factories were to be registered. That order has been rescinded, except as regards existing factories, by an order of February 26th, 1900, *post*, p. 148, which provides for the registration of premises of wholesale dealers in margarine, as well as of margarine factories. Except for this

the new order practically reproduces the old one; but the forms are new.

Competency of analysts.—A Regulation of March 7th, 1900, *post*, p. 152, enumerates the qualifications required in persons seeking to be appointed public analysts. This Regulation should be read in conjunction with a circular letter from the Local Government Board, dated March 8th, 1900, *post*, p. 165, in which portions of the Regulation are explained.

Milk and Butter Standards.—The Sale of Milk Regulations, 1901, *post*, pp. 154, 156, and the Sale of Butter Regulations, 1902, *post*, pp. 158, 159, prescribe certain standards of quality for milk and butter, and provide that articles falling below the standard are to be deemed not to be genuine until the contrary is proved. It should be noted that the Regulations do not fix an absolute standard, but raise a presumption which can be rebutted by evidence. Milk or butter below the standard is not necessarily adulterated, and milk or butter above the standard is not necessarily genuine. A circular letter of the Board of Agriculture, dated December 28th, 1901, *post*, p. 168, contains an explanation of portions of these Regulations.

Circular Letters.

Several circular letters from different Government Departments will be found in the Appendix. They contain a quantity of valuable information on

various matters connected with the administration of the Acts.

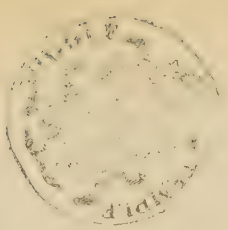
Analysts' quarterly reports.—A letter of January 1st, 1879, *post*, p. 161, contains directions as to the manner in which, and the date up to which, the quarterly reports are to be made out.

Samples.—Letters dated respectively February 26th, 1894, December 28th, 1901, and July 13th, 1903, *post*, pp. 162, 167 and 172, contain directions as to the manner in which samples of milk, butter, and certain other articles should be taken, packed and preserved.

Penalties.—A letter dated July 24th, 1902, *post*, p. 171, calls attention to the inadequate penalties inflicted by some courts of summary jurisdiction.

Decomposition of Milk Samples. A letter dated August 17th, 1903, *post*, p. 174, states the chemical changes which take place in samples of milk which have been kept a long time before being analysed, and discusses the question of how far an analysis of such decomposed milk is reliable.

Besides the letters referred to above, letters dated respectively February 27th, 1900, and March 8th, 1900, *post*, pp. 164, 165, state the general effect of the order as to registration of margarine factories, etc., and of the regulation as to the competency of public analysts.



SALE OF FOOD AND DRUGS ACTS, 1875—1899.

SALE OF FOOD AND DRUGS ACT, 1875.

(38 & 39 Vict. c. 63.)

An Act [*to repeal the Adulteration of Food Acts, and*] *to make better provision for the Sale of Food and Drugs in a pure state.* [11th August 1875.]

[*Whereas it is desirable that the Acts now in force relating to the adulteration of food should be repealed, and that the law regarding the sale of food and drugs in a pure and genuine condition should be amended:*

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:]

Repeal.—The words in the title enclosed in square brackets, together with the whole of the preamble, and the words "Be it therefore" down to the words "as follows:" (also enclosed in square brackets) are repealed by the Statute Law Revision Act of 1893 (56 & 57 Vict. c. 54).

1. *Repeal of statutes.*—[*From the commencement of this Act the statutes of the twenty-third and twenty-*

fourth of Victoria, chapter eighty-four, of the thirty-first and thirty-second of Victoria, chapter one hundred and twenty-one, section twenty-four, of the thirty-third and thirty-fourth of Victoria, chapter twenty-six, section three, and of the thirty-fifth and thirty-sixth of Victoria, chapter seventy-four, shall be repealed except in regard to any appointment made under them and not then determined, and in regard to any offence committed against them or any prosecution or other act commenced and not concluded or completed, and any payment of money then due in respect of any provision thereof.]

The enactments repealed by this section, are the Adulteration of Food and Drink Act, 1860 ; s. 24 of the Sale of Provisions and Pharmacy Act, 1868 ; s. 3 of the Sale of Poisons (Ireland) Act, 1870 ; and the Adulteration of Food and Drugs Act, 1872. These enactments remain repealed notwithstanding the fact that s. 1 is itself repealed by the first Statute Law Revision Act of 1883.

Other Acts relating to adulteration.—The following enactments, contained in the Revenue Acts, relate to the adulteration of certain specific articles of food, and are enforced by the Commissioners of Inland Revenue. Their provisions are set out in the Appendix, *post*, p. 205.

[1718] 5 Geo. 1, c. 11, s. 23, relating to coffee ;

[1724] 11 Geo. 1, c. 30, ss. 5, 9, 39, relating to tea and coffee ;

[1730] 4 Geo. 2, c. 14, s. 11, relating to tea ;

[1733] 7 Geo. 2, c. 19, s. 2, relating to hops ;

[1776] 17 Geo. 3, c. 29, ss. 1—6, 9, relating to tea ;

[1882] 45 & 46 Vict. c. 41, ss. 5 and 6, relating to substitutes for coffee and mixtures of coffee and other articles ;

[1885] 48 & 49 Vict. c. 51, s. 8, relating to beer.

See also, s. 30 of this Act (*post*, p. 82), under which the Commissioners of Customs are invested with certain powers over the importation of tea, and s. 1 of the Act of 1899, relating to the importation of margarine, adulterated or impoverished milk or butter, separated milk, and any other article to which the section may be made to apply by Order in Council (*post*, p. 112).

The Bread Acts of 1822 and 1836 (3 Geo. 4, c. 106, and 6 & 7 Will. 4, c. 37) relate respectively to the sale and adulteration of bread in the city of London and within ten miles of the Royal Exchange, and to the sale and adulteration of bread beyond ten miles of the Royal Exchange. The portions of these Acts relating to adulteration are set out in the Appendix, *post*, p. 195, and further reference to them is made on p. 179.

The adulteration of tobacco does not fall within the scope of the Sale of Food and Drugs Acts, but is provided for by the Excise laws, and by the Oil in Tobacco Act, 1900 (63 & 64 Vict. c. 35). Appendix, *post*, p. 240.

2. *Interpretation of words.*—[*The term "food" shall include every article used for food or drink by man, other than drugs or water :*] (*a*)

The term "drug" (*b*) shall include medicine for internal or external use :

The term "county" shall include every county, riding, and division, as well as every county of a city or town not being a borough (*c*) :

The term "justices" shall include any police and stipendiary magistrate invested with the powers of a justice of the peace in England, and any divisional justices in Ireland.

(*a*) "**Food.**"—This definition of the term "food" has now been repealed (Act of 1899, s. 27, and schedule), and replaced by s. 26 of the Act of 1899, *post*, p. 142.

(*b*) "**Drug.**"—The only difficulty that is likely to arise under this definition is with regard to those substances which have a commercial as well as a medicinal use, *e.g.*, sulphur, carbolic acid, sulphuric acid. In *Fowle* v. *Fowle* (1896), 75 L. T. 514; 60 J. P. 758; 18 Cox C. C. 462, a grocer had sold a quarter of a pound of beeswax which proved to be adulterated with fifty per cent. of paraffin. It was proved that beeswax is used in the preparation of medicines, and is included in the British Pharmacopœia. The justices dismissed the summons on the ground that beeswax was not a drug. The court (GRANTHAM and WRIGHT, JJ.) held that it is a question of fact for the justices to decide whether, under all the circumstances of each case, the article is a drug, and that under the circumstances of this case they were right in holding that the beeswax was not a drug; but GRANTHAM, J., seemed to imply that if the sale had been by a chemist, the result might have been different. From the above case, it is suggested that the test is whether the article was sold for medicinal use or not. In *Houghton* v. *Taplin* (1897), 13 T. L. R. 386, HAWKINS, J., was of opinion that arsenical soap containing no arsenic was not a drug.

(*c*) **Cinque port.**—Provision for the liberty of a Cinque port is made by s. 32, *post*, p. 83; also by s. 7 of the Act of 1879, *post*, p. 99.

DESCRIPTION OF OFFENCES.

3. *Mixing injurious ingredients with food.* — No person shall mix, colour, stain, or powder, or order or permit any other person to mix, colour, stain, or powder, any article of food with any ingredient or material so as to render the article injurious to health, with intent that the same may be sold in that state, and no person shall sell any such article so mixed, coloured, stained, or powdered, under a penalty in each case not exceeding fifty pounds for the first offence; every

offence, after a conviction for a first offence, shall be a misdemeanor, for which the person, on conviction, shall be imprisoned for a period not exceeding six months with hard labour.

This section, which relates to the adulteration of articles of food with substances injurious to health, is much more stringent than the sixth and subsequent sections, which primarily relate to cases where harmless substances only have been used. But it should be noted that a person may be convicted of an offence under s. 6, even though the facts would have warranted a prosecution under this section. This was held by Lord ALVERSTONE, C.J., and LAWRANCE and PHILLIMORE, JJ., in *Goulder* v. *Rook* and *Bent* v. *Ormerod*, [1901] 2 K. B. 290; 70 L. J. K. B. 747; 84 L. T. 719; 49 W. R. 684; 65 J. P. 646, where two beer-sellers had sold beer containing arsenic which had been added to the beer without their knowledge or consent.

Prosecutions are now seldom instituted under this section. This may be owing partly to the fact that adulteration with injurious materials is not very prevalent, and partly to the heavy expense which is usually incurred in obtaining a conviction, arising from the necessity of employing scientific and professional witnesses to prove that the articles are injurious to health. Considerable diversity of opinion exists among medical and scientific men as to whether certain articles are injurious to health or not. In *Summers* v. *Grist* (1896), 60 J. P. 346, the justices at South London Sessions held that it was an offence under this section to sell a 1-lb. bottle of peas knowing it to contain three grains of sulphate of copper.

The evidence before the select committee of 1894—6, showed that aniline dyes are employed in colouring food stuffs, and that antiseptics are added to almost all perishable foods. Some of these dyes and preservatives are said to be poisonous, and their use, therefore, would be prohibited under this section. The committee, in their report, stated that "they understand that it would be difficult to prove that some colouring agents

and antiseptics are injurious to health, but the opinion has been expressed that some limits to their use should be imposed." And the report goes on to say that the committee thought the matter one which deserved further investigation by recognised scientific authorities, with a view to the expression of an opinion that would be regarded as authoritative. A departmental committee was appointed in 1899 by the president of the Local Government Board to inquire into the use of preservatives in food, and published its report in 1901. Its recommendations were as follows :

(a) That the use of formaldehyde or formalin, or preparations thereof, in foods or drinks be absolutely prohibited, and that salicylic acid be not used in a greater proportion than 1 gr. per pint in liquid food, and 1 gr. per lb. in solid food. Its presence in all cases to be declared.

(b) That the use of any preservative or colouring matter whatever in milk offered for sale in the United Kingdom be constituted an offence under the Sale of Food and Drugs Acts.

(c) That the only preservative which it shall be lawful to use in cream be boric acid or mixtures of boric acid and borax, and in amount not exceeding 0·25 per cent. expressed as boric acid. The amount of such preservative to be notified by a label on the vessel.

(d) That the only preservative permitted to be used in butter and margarine be boric acid or mixtures of boric acid and borax, to be used in proportions not exceeding 0·5 per cent. expressed as boric acid.

(e) That in the case of all dietetic preparations intended for the use of invalids or infants, chemical preservatives of all kinds be prohibited.

(f) That the use of copper salts in the so-called greening of preserved foods be prohibited.

(g) That means be provided, either by the establishment of a separate court of reference or by the imposition of more direct obligation on the Local Government Board, to exercise supervision over the use of preservatives and colouring matters

in foods, and to prepare schedules of such as may be considered inimical to the public health.

Up to the present time (October, 1903) none of these recommendations have been carried into effect.

Liability of limited company.—There is some doubt as to whether a limited company can be prosecuted under this section. In *Pearks, Gunston and Tee, Limited* v. *Ward*, and *Hennen* v. *Southern Counties Dairies Co., Limited*, [1902] 2 K. B. 1 ; 71 L. J. K. B. 656 ; 87 L. T. 51 ; 66 J. P. 774 ; CHANNELL, J., was inclined to think that it can, but Lord ALVERSTONE, C.J., appeared to doubt this.

Liability of master.—A person under this and the subsequent section is liable for the acts of his or her servants in the ordinary course of business, subject to the provisions of s. 5, *post*. The word "permit," in this and the 4th section, extends to neglect of reasonable supervision. See also note (*a*) to s. 6, *post*, p. 10.

To knowingly permit servants to mix unwholesome ingredients with any article of food which is intended for sale is a misdemeanor at common law. In *R.* v. *Dixon* (1814), 3 M. & S. 11 ; 4 Camp. 12 ; 15 R. R. 381, a baker was convicted for supplying children at an asylum with bread, into which his servants, to his knowledge, had introduced alum.

Warranty presumably no defence.—In *Elliott* v. *Pilcher*, [1901] 2 K. B. 817 ; 70 L. J. K. B. 795 ; 85 L. T. 50 ; 65 J. P. 743 ; 20 Cox C. C. 18 ; BIGHAM, J., expressed an opinion that a warranty under s. 25 of this Act would be no defence to a prosecution under this or the following section. The point, however, is of but little importance since by s. 5, *infra*, the accused is entitled to an acquittal if he proves that he had no guilty knowledge. See also note (*b*) to s. 25, *post*, p. 69.

Label no defence.—The vendor of an article of food containing an ingredient injurious to health, is not protected from the penalty of this section by a descriptive label (see s. 8, *post*). For example, the sale of cayenne pepper adulterated with red lead would not be protected from the provisions of this section by a label indicating the presence of the lead.

4. *Mixing drugs with injurious ingredients.* — No person shall, except for the purpose of compounding as hereinafter described, mix, colour, stain, or powder, or order or permit any other person to mix, colour, stain, or powder, any drug with any ingredient or material so as to affect injuriously the quality or potency of such drug, with intent that the same may be sold in that state, and no person shall sell any such drug so mixed, coloured, stained, or powdered, under the same penalty in each case respectively as in the preceding section for a first and subsequent offence.

The notes to s. 3, *supra*, are also applicable to this section, with this difference, that it is not necessary to prove direct injury to health. It is sufficient to prove that the quality or potency of the drug is deficient.

5. *Proof of absence of knowledge.* — Provided that no person shall be liable to be convicted under either of the two last foregoing sections of this Act in respect of the sale of any article of food, or of any drug, if he shows to the satisfaction of the justice or court before whom he is charged that he did not know of the article of food or drug sold by him being so mixed, coloured, stained, or powdered as in either of those sections mentioned, and that he could not with reasonable diligence have obtained that knowledge.

Guilty knowledge.—This section renders it unnecessary to prove any *mens rea* in cases of offences or prosecutions under the two foregoing sections, for it throws upon the defendant the *onus* of proving that there was no *mens rea*. Moreover it is not sufficient to entitle the defendant to exemption under this

section for him to prove that he had no knowledge of the adulteration. He must also prove that he could not have obtained that knowledge with reasonable diligence.

Liability of master. — This section will not serve as a defence for a person who, neglecting to exercise a reasonable supervision over his or her servants, affords them an opportunity of adulterating an article of food in violation of ss. 3, 4, but it is, of course, competent for a person charged under ss. 3, 4, to prove that he or his servants had been purposely deceived.

6. *Sale of articles of food and of drugs not of the proper nature, substance, and quality.*—No person shall sell (*a*) to the prejudice of the purchaser (*b*) any article of food or any drug which is not of the nature, substance, and quality (*c*) of the article demanded (*d*) by such purchaser, under a penalty (*e*) not exceeding twenty pounds: Provided that an offence shall not be deemed to be committed under this section in the following cases (*f*); that is to say,

(1) Where any matter or ingredient not injurious to health has been added to the food or drug because the same is required for the production or preparation thereof as an article of commerce, in a state fit for carriage or consumption, and not fraudulently to increase the bulk, weight, or measure of the food or drug, or conceal the inferior quality thereof (*g*);

(2) Where the drug or food is a proprietary medicine, or is the subject of a patent in force, and is supplied in the state required by the specification of the patent (*h*);

(3) Where the food or drug is compounded as in this Act mentioned (*i*) ;

(4) Where the food or drug is unavoidably (*k*) mixed with some extraneous matter in the process of collection or preparation.

This is a most important section, and the majority of prosecutions under the Sale of Food and Drugs Acts are instituted under it. It may be observed that a person may be prosecuted under this section even though the facts proved would have supported a conviction under other sections of the Act, *e.g.*, ss. 3 and 4 (*Goulder* v. *Rook*, *ante*, p. 5), and s. 7 (*Beardsley* v. *Walton*, *infra*, p. 29).

Formalities to be observed.—In taking out a summons under this section, the provisions of s. 19 (2) of the Act of 1899, which replaces s. 10 of the Act of 1879, should be strictly observed (see p. 131, *post*).

(*a*) **Guilty knowledge.**—There is no doubt that there is no necessity to prove *mens rea* in this or the subsequent sections of the Act. This being a penal statute, such a construction is contrary to the maxim, "*actus non facit reum nisi mens sit rea*," but such words as "knowingly" or "with knowledge" appear only in s. 5 ; and in *Betts* v. *Armstead* (1888), 20 Q. B. D. 771 ; 57 L. J. M. C. 100 ; 58 L. T. 811 ; 36 W. R. 720 ; 52 J. P. 471 ; 16 Cox C. C. 418 ; CAVE, J., said : "It was suggested that the justices ought to read into the section (s. 6) the word 'knowingly.' . . . That word is not to be found in the section, and it is clear from the words of other sections of the Act that the word 'knowingly' was intentionally omitted from s. 6." See also the cases in note (*b*) to s. 9, *post*, p. 35.

In the repealed Adulteration Act of 1872, the words "to the knowledge of" were inserted, and they were found fatal to obtaining convictions.

Liability of master.—The general rule of law is that a master is not criminally responsible for the acts of his servant,

if they are done without his knowledge or authority, expressed or implied (*Harrison* v. *Leaper* (1862), 5 L. T. 640 ; 26 J. P. 69 ; *Core* v. *James* (1871), L. R. 7 Q. B. 135 ; 41 L. J. M. C. 19 ; 25 L. T. 593 ; 20 W. R. 201) ; but that he is responsible when there is reasonable evidence of an expressed or implied, actual or constructive, authority on his part for the commission of an act (see *Searle* v. *Reynolds* (1866), 7 B. & S. 704 ; 35 L. J. Q. B. 18 ; 14 L. T. 518 ; and *Wilson* v. *Stewart* (1863), 3 B. & S. 913 ; 32 L. J. M. C. 198 ; 9 Jur. (N.S.) 1130 ; 8 L. T. 277 ; 11 W. R. 640). If a man's wife manages his business in his absence, and sells an adulterated article, the husband in this case becomes criminally responsible in respect of the sale as if it had been executed by his servant or agent. If this were otherwise, tradesmen or other persons could always evade the law.

Under this section a master is responsible for the *unauthorised* acts of his servant, or even of a stranger. In *Brown* v. *Foot* (1892), 61 L. J. M. C. 110 ; 66 L. T. 649 ; 56 J. P. 581 ; 17 Cox C. C. 509 ; the appellant was a retail milk seller, and it was his practice, on receiving the cans of milk from the country, to take a sample from each can before it was sent out for sale. He also published a warning to his servants, who sold the milk from the various cans, that any servant whose can of milk did not correspond with the sample taken from it would be liable to dismissal. One of his servants admitted that he had watered his can previously to selling some of its contents to an inspector, and it was held, by HAWKINS and WILLS, JJ., that the appellant (the master) had been rightly convicted under this section for selling adulterated milk when, as has been seen, he had not only expressly forbidden his servants to adulterate, but had also taken special precautions to prevent them from doing so. In the course of his judgment, WILLS, J., said : "The servant was admittedly employed in the general business of the appellant in selling milk by retail . . . Therefore the appellant must see that the servant within the scope of his authority does not contravene the Act."

The above case was followed and approved in *Parker* v. *Alder*, [1899] 1 Q. B. 20; 68 L. J. Q. B. 7; 79 L. T. 381; 62 J. P. 772; 19 Cox C. C. 191; in which a dairy farmer at Wantage contracted to supply pure milk to be delivered to the purchaser at Paddington station. In accordance with the contract he delivered a churn of pure and unadulterated milk to the Great Western Railway at the local station for conveyance to Paddington. On its arrival at Paddington the milk was found to contain nine per cent. of added water. The magistrate found as a fact that the water had been added unlawfully during the railway journey by someone without the knowledge or authority of, and without any default or negligence on the part of, the seller or any servant of his:—*Held*, by Lord Russell of Killowen, C.J., and Wills, J., that the seller was liable to conviction for an offence under s. 6 of this Act, and Lord Russell, in the course of his judgment, said: "Assuming that the respondent [the seller] was entirely innocent morally, and had no means of protecting himself from the adulteration of this milk in the course of transit, has he committed an offence against these Acts? I think he has. . . . It has been decided in *Brown* v. *Foot*, *supra*, in the clearest manner that an innocent vendor of milk is undoubtedly liable for the unauthorised act of his servant in adulterating it . . . and there is really no material difference between that case and this, because a vendor is no more able to prevent the adulteration by a dishonest servant than he is to prevent adulteration by strangers, such as the servants of the railway company. This is one of the class of cases in which the legislature has, in effect, determined that *mens rea* is not necessary to constitute the offence."

In *Kearley* v. *Tonge* or *Tyler* (1891), 60 L. J. M. C. 150; 65 L. T. 261; 56 J. P. 72; 17 Cox C. C. 328, a different view was taken. In that case a servant of the appellants sold lard adulterated with foreign matter without a proper label indicating its character. On the hearing of the summons, it was proposed to call evidence to show that the action of the servant was contrary to express instructions. The justices refused to

admit the evidence, but stated a case to the High Court; and CAVE and CHARLES, JJ., decided that the justices were wrong. CAVE, J., said: "There is nothing in this Act which makes a master responsible for the unauthorised acts of his servant." And CHARLES, J., added: "The statute does not alter the general rule of the criminal law, and the appellants were entitled to prove, if they could, that the act with which they were charged was not done by themselves or by their agent with their authority."

This case was not referred to in *Brown* v. *Foot* or in *Parker* v. *Alder*, and seems to be in direct opposition to them. The decision itself may possibly be explained on the ground that the magistrates had excluded evidence of non-complicity on the part of the master, which the court in *Brown* v. *Foot* expressly held to be relevant on the question of the penalty to be imposed; but the language of the judgments goes much further. There can, however, be no doubt that *Brown* v. *Foot* and *Parker* v. *Alder* are correct, and would be followed, notwithstanding the decision in *Kearley* v. *Tonge*. See also *Farley* v. *Higginbotham* in note (*g*) to s. 17 of this Act, *post*, p. 58.

Liability of servant.—A servant can also be convicted under this section as the actual seller (*Hotchin* v. *Hindmarsh*, [1891] 2 Q. B. 181; 60 L. J. M. C. 146; 65 L. T. 149; 39 W. R. 607; 57 J. P. 775). In that case the servant of a dairy company was convicted of selling milk adulterated with water, and Lord COLERIDGE, C.J., said: "In my opinion, a person who takes the article in his hand and performs the physical act of transferring the adulterated thing to the purchaser, is a person who sells within this section." It should be noted that this decision does not prevent the master from being convicted *as well* as the servant. *Hotchin* v. *Hindmarsh* was referred to with approval in *Brown* v. *Foot*, *supra*.

(*b*) **"To the prejudice of the purchaser."**—The cases collected in the following note illustrate two main propositions: (1) That a purchaser cannot be prejudiced when notice is given to him at the time of the sale that the article sold is not

of the nature, substance, and quality of the article he demands; and that (2) in order to show that an article was sold to the prejudice of the purchaser it is not necessary to prove that he has sustained actual prejudice or damage.

With regard to the first point, it is now well settled that where the seller of an article brings to the purchaser's knowledge the fact that the article sold is not of the nature, substance, or quality of the article he demands, the sale is not to the prejudice of the purchaser within the meaning of this section. This was decided in *Sandys* v. *Small* (1878), 3 Q. B. D. 449; 47 L. J. M. C. 115; 39 L. T. 118; 42 J. P. 550; 26 W. R. 814, where Cockburn, L.C.J., in giving judgment, said: "The provisions of the 6th section seem to me to apply to cases where a seller professes to sell to the purchaser an article as being of a certain denomination, whereas the article has been altered by an admixture of some other ingredient, and it seems that when the article is so altered this must be considered to have been done to the prejudice of the purchaser, unless it is duly and sufficiently brought to his knowledge; but if the alteration of the article . . . is brought to the knowledge of the purchaser, and he chooses to purchase it notwithstanding, it can never have been intended that such a transaction should be interfered with."

In *Higgins* v. *Hall* (1886), 51 J. P. 293, the appellant's wife, who was serving in his shop, when asked by a purchaser for a pound of coffee, said, "We don't keep it," but added, pointing to some tins labelled "coffee and chicory," that she sold that as a mixture. She then sold some of the mixture, which was found to contain only about 30 per cent. of coffee:—*Held*, that the justices were wrong in convicting the appellant of selling coffee, for his wife had sold only a mixture, as she was entitled to do if she represented that it was a mixture. Moreover, the purchaser had asked for a mixture and had got it.

In *Gage* v. *Elsey* (1883), 10 Q. B. D. 518; 52 L. J. M. C. 44; 48 L. T. 226; 31 W. R. 501; 47 J. P. 391, an inspector under the Sale of Food and Drugs Acts bought from the appellant three pints of gin, which proved to be more than thirty-five

degrees under proof, but at the time of the sale the appellant called his attention to the following printed notice which was hanging up in the room: "All spirits sold in this establishment are of the same quality as heretofore, but to meet the requirements of the Food and Drugs Adulteration Act they are now sold as diluted spirits; no alcoholic strength guaranteed": —*Held*, by Manisty and Mathew, JJ., that there was no sale to the prejudice of the purchaser. *Palmer* v. *Tyler* (1897), 61 J. P 389, was a case in which an exactly similar notice was used.

In *Morris* v. *Johnson* (1890), 54 J. P. 612, the facts were as follows: Two servants of an inspector went into a public-house and entered a public room called the club room, passing by the bar and kitchen on their way. They then called for half-a-pint of whisky and were served with it in the club room. Upon analysis the whisky proved to be $37\frac{1}{2}$ degrees under proof, and the usual proceedings under this Act were instituted. There was evidence that at the time of the sale there was a notice posted in the bar and the kitchen to this effect: "All spirits sold at this establishment are diluted with water according to price," but there was no such notice in the club room. It was further proved that the bar and the kitchen were visible to anyone approaching the club room from the entrance, and there was but one entrance to the house; that neither of the two men saw or knew of any notice posted in any part of the house, and that nothing was said at the time of the sale as to the quality of the whisky. But there was nothing to show that the two men did not in fact know that the spirits sold at this house were diluted. Upon these facts the justices refused to convict, but stated a case for the opinion of the High Court. It was there held by Fry, L.J., and Mathew, J., that the justices, before they came to their decision, ought to have inquired whether the men knew that the practice at the respondent's house was to sell only diluted spirits; in which case no conviction was proper. "The purchasers' complaint," said Mathew, J., "is that they did not see the notice; but then there was no finding in the case whether they did not know well enough of

the diluting of all spirits before sold at the respondent's house. If the justices find that the men did not know that spirits were sold diluted, then there should have been a conviction. But if they did know, then there should be no conviction."

Morris v. *Askew* (1893), 57 J. P. 724, appears to have been a similar case, but it has not been fully reported, and the note of the case which appears in the "Justice of the Peace" is hardly full enough to be reliable.

The two last cases seem to be inconsistent with the later decision in *Pearks, Gunston and Tee, Limited* v. *Ward*, [1902] 2 K. B. 1 ; 71 L. J. K. B. 656 ; 87 L. T. 51 ; 66 J. P. 774, in which the King's Bench Division held that a sale may be to the prejudice of the purchaser within s. 6 although the purchaser had special knowledge, not derived from information given by the seller, that the article sold was not of the nature, substance, and quality demanded by him ; and that the test is whether the sale would have been to the prejudice of a purchaser who had not that special knowledge. Lord ALVERSTONE, C.J., said : "The question, in my opinion, is, not what is the actual knowledge of the particular purchaser, except in so far as that knowledge is derived from information given by the seller either by notice, by the nature of the article itself, or by what passed at the time of the purchase ; the question is what would be the position, not of a skilled purchaser like an inspector, but of an ordinary person purchasing the article without any special knowledge." DARLING, J., said : "There is a sale to the prejudice of the purchaser, if a purchaser in the abstract would be prejudiced, although the actual purchaser may, for some reason peculiar to himself, not be prejudiced." And CHANNELL, J., expressed the same opinion.

In *Pearks, Gunston and Tee, Limited* v. *Houghton*, [1902] 1 K. B. 889 ; 71 L. J. K. B. 385 ; 86 L. T. 325 ; 50 W. R. 605 ; 66 J. P. 442, butter was sold blended with milk in such a way as to contain 7·8 per cent. of water above the permissible maximum of 16 per cent. There was a notice in a conspicuous position in the shop to the following effect : "Notice. Pearks' butter as sold at this establishment is choicest butter blended with English full cream milk by new and improved machinery,

whereby it retains about 20 to 24 per cent. of moisture, and acquires that delicacy of flavour which has made Pearks' butter so famous." The inspector had asked for half a pound of shilling butter, and did not in fact actually see the notice. The King's Bench Division held that, assuming that only one kind of butter was sold in the shop, the seller was protected by the notice and the sale was not to the prejudice of the purchaser. A further point was raised in the case, which is dealt with in the notes to s. 8, *infra*.

In *Hayes* v. *Rule and Law* (1902), 87 L. T. 133 ; 18 T. L. R. 535, the facts were the same as in the last case, except that the inspector had asked for "best fresh butter," and had not actually seen the notice, though he admitted that he could have done so if he had liked. The King's Bench Division considered that the fact that best fresh butter was asked for was sufficient to distinguish the case from *Pearks* v. *Houghton*, and expressed an opinion that under the circumstances the sale would be to the prejudice of the purchaser, unless it could be proved that he actually saw the notice. The actual decision, however, was in favour of the defendants upon another point. See note (*a*) to s. 8, *post*, p. 31.

Of course the notice must be clear and unequivocal. In *Collett* v. *Walker* (1895), 64 L. J. M. C. 267 ; 59 J. P. 600, a purchaser, on entering a shop and asking for some cheese, was supplied with a mixture which was composed of skimmed milk and beef fat, the bulk of the butter fat which is contained in cheese made from "whole" milk having been abstracted. Attached to the bulk of the substance from which the purchaser's portion was taken was a label containing the words "Valleyfield finest Oleine cheese," the words "finest Oleine" being in smaller type than the others. No notice of admixture by a label on or with the article was given to the purchaser, so as to give the seller a defence under s. 8, *post*. The purchaser did not notice the word "oleine" on the label, and said that if he had he would not have known what it meant :—*Held*, by Grantham and Lawrance, JJ., that the appellant was rightly convicted of an offence under s. 6.

A false representation as to the nature, substance, and quality of the article demanded, made by the seller prior to the sale, does not constitute an offence under s. 6, provided that the true nature, etc., is disclosed at the time of sale. In *Kirk* v. *Coates* (1885), 16 Q. B. D. 49 ; 55 L. J. M. C. 182 ; 54 L. T. 178 ; 34 W. R. 295 ; 50 J. P. 148, the question was whether a milkman was guilty of an offence under this section who stated to an officer that some cans contained new milk, but afterwards, on the officer intimating that he would have some, declared that it was old milk and not new. The magistrates decided that this was not a sale of new but of old milk, and that the defendant was therefore not liable under s. 6. The court upheld the decision of the magistrates. *Frew* v. *Gunning* (1901), 3 Fraser (J.C.), 51 ; 3 Adam, 339 ; 38 Sc. L. R. 555, was a similar case. There, a milk seller on his rounds ran short of milk, and bought a further supply from a dairyman. An inspector asked him for some "sweet milk." He was going to supply him from what was left of his own milk, but the inspector insisted upon being supplied from the can containing the purchased milk. He told the inspector before purchase that it was not his own milk, and warned him that it might or might not prove to be sweet milk. The milk turned out to be adulterated. The sheriff substitute acquitted and the Court of Justiciary held that the acquittal was right.

If a false representation is in fact made at the time of the sale, an offence is committed, even though the purchaser must have known from the price paid that the representation was false. In *Heywood* v. *Whitehead* (1898), 76 L. T. 781, a milkman sold a pint of milk for a penny as new milk, though it was in fact skim milk. One of the magistrates thought that the inspector must have known from the price that the milk was not new milk, and that, therefore, no offence had been committed ; but the court held that the milkman ought to have been convicted.

(2) With regard to the second point, *i.e.*, that in order to show that an article was sold to the prejudice of the purchaser it is not necessary to prove that the purchaser has suffered

actual prejudice or damage, there was at one time a conflict of opinion.

In *Davidson* v. *M'Leod* (1877), 5 Rettie (J.C.), 1 ; 3 Coup. 511 ; 42 J. P. 43, the majority of the High Court of Justiciary in Scotland held that a purchaser for analysis under s. 13 of the Act, buying samples for analysis, and not for consumption or at his own expense, could not be prejudiced by the purchase ; but in *Hoyle* v. *Hitchman* (1879), 4 Q. B. D. 233 ; 48 L. J. M. C. 97 ; 40 L. T. 252 ; 27 W. R. 487 ; 43 J. P. 431, the Queen's Bench Division took the opposite view ; and as the practical effect of the decision in *Davidson* v. *M'Leod* was to render s. 6 inoperative in Scotland, it was enacted by s. 2 of the Act of 1879, that it should be no defence to allege that the purchaser having bought only for analysis was not prejudiced (see *post*, p. 92).

As regards purchases for analysis, therefore, the point is now settled by s. 2 of the Act of 1879. But the judgments in *Hoyle* v. *Hitchman* cover the case of a private as well as an official purchaser ; for Mellor, J., said : "If a purchaser, whoever he may be, . . . gets an article inferior to that which he demands and pays for, it seems to me that he is necessarily prejudiced within the meaning of the section. . . . The real offence is the fraudulent sale of an article adulterated so as to be of an inferior nature, etc., to that which is demanded and paid for. The necessity for the words 'to the prejudice of the purchaser,' is this : but for these words, various absurdities might arise. . . . The sale of an article of a superior nature or quality to that demanded, would be an offence." And Lush, J., said : "What is the meaning of 'prejudice' ? It cannot be confined to pecuniary prejudice, or prejudice arising from the consumption of unwholesome food. The prejudice is that which the ordinary customer suffers, viz., that which is suffered by anyone who pays for one thing, and gets another of inferior quality. . . . The words 'to the prejudice of the purchaser' are necessary, because if they had not been inserted, a person might have received a superior article to that which he demanded and paid for, and yet an

offence would have been committed." The result is, that it is never necessary to prove any actual damage to the purchaser in order to obtain a conviction under this section, and that the words "to the prejudice of the purchaser" are only inserted, as MELLOR, J., points out, to prevent such an absurdity as a prosecution for selling a better article than the one demanded.

Further, it was decided in *Pearks, Gunston and Tee, Limited* v. *Ward*, *supra*, p. 16, that it is enough to show that any ordinary purchaser would be prejudiced, even though the person who actually bought the sample, owing to some special circumstance, has not been prejudiced at all.

(*c*) **"Nature, substance, and quality."**—In *Davidson* v. *M'Leod*, *ante*, the judges held that the words "*nature, substance, and quality*," could not be disjoined, and that the article sold must be different in all three respects from the article demanded, and that as the statute was intended to strike only at foreign admixtures, the very nature of the substance must be altered, or the offence contemplated could not be committed. By s. 2 of the Act of 1879 (see *post*, p. 92), it is provided that it shall not be a good defence to prove that the article of food or drug in question, though defective in nature, or in substance, or in quality, was not defective in all three respects.

(*d*) **"The article demanded"** is the article known commercially under that name. In *Pashler* v. *Stevenitt* (1876), 35 L. T. 862 ; 41 J. P. 136, the appellant sold as gin a liquid composed of 26 per cent. of alcohol, 70 per cent. of water, and 4 per cent. of sugar. It was proved that gin was sold by retailers at a strength varying from proof to 20 degrees under proof. This liquid was 44 degrees under proof, and although the analyst said he should call it gin whose alcoholic strength was exceedingly low, the justices convicted the appellant. The conviction was upheld by the High Court, and CLEASBY, B., said : "This was not an article of the nature, substance, and quality of the article demanded by the purchaser . . . The justices have come to the conclusion that a mixture of alcohol and water so far as 44 per cent. below proof is not of the

quality of gin as known commercially . . . It is impossible for us to say that they were wrong." It should be noted that since the decision of this case the Act of 1879 (s. 6) has fixed the minimum strength for gin at 35 degrees under proof.

If the article demanded has some recognised standard of quality or composition, it is an offence against the section to sell an article which does not come up to that standard.

Milk.—It has for some time past been generally recognised by analysts that genuine milk contains at least 3 per cent. of milk fat and at least 8·5 per cent. of other solids, and this standard has to some extent been definitely established by the Sale of Milk Regulations, 1901 (Appendix, *post*, p. 154), made under s. 4 of the Act of 1899, which provide that milk containing less than 3 per cent. of milk fat, or less than 8·5 per cent. of milk solids other than milk fat, is to be presumed not to be genuine until the contrary is proved. A similar presumption is to arise in the case of skimmed or separated milk containing less than 9 per cent. of milk solids. It should be observed that these Regulations do not absolutely fix a standard of genuineness, but merely shift the burden of proof from the prosecution to the defendant in cases to which they apply. See the remarks on this subject in a circular letter of the Board of Agriculture, dated 28th December, 1901, in the Appendix, *post*, p. 168. It will, however, be found extremely difficult in practice to prove the genuineness of milk which falls below the standard. The following cases show the view that has been taken in the courts upon this question from time to time.

In *Lane* v. *Collins* (1884), 14 Q. B. D. 193; 54 L. J. M. C. 76; 52 L. T. 257; 33 W. R. 365; 49 J. P. 89, a milk seller was prosecuted for selling skim milk as milk. The magistrates acquitted him on the ground that skim milk is a kind of milk, and MATHEW and DAY, JJ., held that the acquittal was right. The argument was extremely short, no authorities being cited to the court, and the decision does not appear to have been followed in any subsequent case. In *Smithies* v. *Bridge*, *infra*, Lord ALVERSTONE, C.J., said that *Lane* v. *Collins* was decided on its own special facts, and that he did not know that he

would have agreed with the decision. It is suggested that *Lane* v. *Collins* cannot now be regarded as law.

In *Banks* v. *Wooler* (1900), 81 L. T. 785 ; 64 J. P. 245 ; 19 Cox C. C. 432, the defendant had sold milk which contained 3·55 per cent. of fat (more than the standard), and 7·46 per cent. of other solids (less than the standard), and the analyst certified that 10 per cent. of water had been added. The magistrates said that the milk was exceptionally good, and that the offence was trifling, and dismissed the case. Channell and Bucknill, JJ., said that if the magistrates meant that the milk was exceptionally good after the adulteration they were justified in dealing with the case as they did. This does not mean that an offence had not been committed, but merely that it was of such a trifling nature as not to call for the infliction of a fine or costs.

But milk which is actually the genuine product of the cow must not be sold as milk if it falls below the standard owing to improper treatment of the animal. In *Smithies* v. *Bridge*, [1902] 2 K. B. 13 ; 87 L. T. 167 ; 50 W. R. 686 ; 66 J. P. 740, a milk seller sold milk which was deficient in fat to the extent of 30 per cent. The milk was sold in the same state as when it came from the cow, and the deficiency arose from the fact that the cow had not been milked for sixteen hours, during which period much of the fat was absorbed. The magistrates convicted, and Lord Alverstone, C.J., and Channell, J. (*dissentiente* Darling, J.), held that the conviction was right. The majority of the court expressed an opinion that genuine milk produced by a diseased or improperly treated cow ought not to be sold as milk.

Butter.—It has long been recognised by analysts that properly made butter ought not to contain more than 16 per cent. of water ; and by the Sale of Butter Regulations, 1902 (Appendix, p. 158), it is provided that butter containing more than this percentage of water is not to be regarded as genuine until the contrary be proved. In *Pearks, Gunston & Tee, Limited* v. *Knight*, and *Same* v. *Van Tromp*, [1901] 2 K. B. 825 ; 70 L. J. K. B. 1002 ; 85 L. T. 379 ; 50 W. R. 104 ; 65 J. P.

822 ; 20 Cox C. C. 46, the appellants had sold as butter a mixture of butter and milk which, by reason of such admixture, contained 22·5 per cent. of water. The magistrate held that the mixture was not butter, and WILLS and KENNEDY, JJ., approved his decision, apparently rather upon the ground that butter and milk is not butter than on account of the excess of water.

A Bill prohibiting the sale as butter of butter containing more than a certain percentage of water was introduced into Parliament by the Board of Agriculture in the sessions of 1902 and 1903, but was withdrawn.

Drugs.—The question often arises whether the British Pharmacopœia has fixed an absolute standard for drugs. In *White* v. *Bywater* (1887), 19 Q. B. D. 582 ; 36 W. R. 280 ; 51 J. P. 821, a chemist sold some tincture of opium which contained less alcohol and opium than that prepared according to the standard of the British Pharmacopœia :—*Held*, by Lord COLERIDGE, C.J., and A. L. SMITH, J., that he ought to have been convicted of an offence under this section, although the purchaser had not asked for tincture of opium prepared according to the standard of the British Pharmacopœia ; and A. L. SMITH, J., said : " Tincture of opium must mean the article known in commerce as tincture of opium. The thing supplied was not tincture of opium of commerce, but an inferior article."

But the British Pharmacopœia must state clearly the composition of the article. In *Hudson* v. *Bridge* (1903), 67 J. P. 186 ; 19 T. L. R. 369, the article sold was vinegar of squills, and it contained only 2·5 per cent. of acetic acid. The British Pharmacopœia does not state in terms what the composition of vinegar of squills is when made, but contains a recipe for making it in a particular way from certain ingredients in certain proportions, the result of which would be that the article, when freshly made, would contain 4·27 per cent. of acetic acid. The King's Bench Division held that there is no standard for the drug.

In cases of this kind an attempt is sometimes made to prove

that there is a commercial standard for the drug other than that of the British Pharmacopœia. In *Dickins* v. *Randerson*, [1901] 1 K. B. 437 ; 70 L. J. K. B. 344 ; 84 L. T. 204 ; 65 J. P. 262 ; 19 Cox C. C. 643, a chemist sold mercury ointment containing 12·5 per cent. of mercury. According to the British Pharmacopœia it should contain 48·5 per cent. The chemist brought a quantity of evidence to show that it is the universal practice among druggists to supply the weaker ointment unless the stronger one is prescribed or specially asked for. The justices convicted him in spite of this evidence, and Bruce and Phillimore, JJ., held that the conviction was right.

In *Boots' Cash Chemists* (*Southern*), *Limited* v. *Cowling*, [1903] 67 J. P. 195 ; 19 T. L. R. 370, a chemist sold liniment of soap made with methylated spirit, and not with alcohol as prescribed by the British Pharmacopœia. He tendered evidence to show that there is a commercial standard for the drug, different from that of the British Pharmacopœia, but the evidence was rejected by the magistrate on the authority of *Dickins* v. *Randerson*, *supra*. Lord Alverstone, C.J., and Wills and Channell, JJ., held that the evidence ought to have been received, but expressly refrained from giving any opinion as to what its value might be, and sent the case back for rehearing. The effect of these two cases seems to be that the standard of the British Pharmacopœia is not conclusive, but that very strong evidence is necessary to displace it.

On the other hand, if the article demanded has no recognised standard of quality or composition, *e.g.*, cream, no offence is committed by selling an article of low quality but genuine. In the case of *Hoyle* v. *Hitchman*, *ante*, Lush, J., referred to *Davidson* v. *M'Leod*, and while dissenting from the views of some of the judges expressed therein, said : "The decision itself seems to me to be correct. The article there demanded and supplied was cream. It was admitted that it contained no foreign admixture or adulteration, but it was cream of an inferior quality to that ordinarily sold in Glasgow. Cream is not an article having any standard of quality. It varies with the

character of the cows from which the milk comes and the food on which they are fed. This was genuine cream though of inferior quality. It appears to me that the sale in such a case was not an offence within the Act at all. In the present case the article demanded was milk : that supplied was milk and water. It was an adulterated article."

A similar decision was given in the Scotch case of *Morton* v. *Green* (1881), 8 Rettie (J.C.), 36 : 4 Coup. 437, where it was held that the sale of an inferior, though pure, quality of cream at a low price, was not an offence within the statute.

In *Smith* v. *Wisden* (1901), 85 L. T. 760 ; 66 J. P. 150, marmalade was sold which contained 13 per cent. of glucose instead of cane or beet sugar. Evidence was given that for many years glucose had been used by some marmalade manufacturers but not by all, and that its use had a tendency to prevent mildew : but the justices convicted the seller. The King's Bench Division held that there was no evidence to show that this substance was not "marmalade," and they quashed the conviction. Similarly, in the Scotch case of *Wilson* v. *McCutcheon* (1902), 4 Adam. 34 ; 40 Sc. L. R. 31, the complaint stated that the defendant had sold marmalade which was not of the nature, substance, and quality demanded, in respect that it contained 14 per cent. of starch glucose. The Court of Justiciary held that there is no recognised standard for marmalade, and that the complaint disclosed no offence.

An accidental introduction of deleterious matter into an article sold for food does not of necessity make it different in nature, substance and quality from the article demanded (*per* Lord ALVERSTONE, C.J., in *Goulder* v. *Rook* and *Bent* v. *Ormerod*, [1901] 2 K. B. 290 ; 70 L. J. K. B. 747 ; 84 L. T. 719 ; 49 W. R. 684 ; 65 J. P. 646).

It should be noted that if an article sold is altogether different from that which was demanded by the purchaser, it is an offence under this section. See *Knight* v. *Bowers* (1885), 14 Q. B. D. 845 : 54 L. J. M. C. 108 ; 53 L. T. 234 ; 33 W. R. 613 ; 49 J. P. 614 ; 15 Cox C. C. 728, where saffron was asked for and savin supplied. If this were not so, many offenders

would escape ; as, for instance, those who sell lard for butter, or chicory for coffee.

The abstraction of a constituent from any article of food is provided for by s. 9, *post*, p. 34.

The question whether the article sold is the article demanded by the purchaser is one of fact for the justices (*Webb* v. *Knight* (1877), 2 Q. B. D. 530 ; 46 L. J. M. C. 264 ; 36 L. T. 791 ; 26 W. R. 14 ; 41 J. P. 726). See also the judgment of GROVE, J., in *Pashler* v. *Stevenitt*, *supra*, and that of Lord ALVERSTONE, C.J., in *Goulder* v. *Rook*, *supra*.

In determining the above question, the justices are entitled to use any special knowledge that they may possess as to what is known commercially under any particular name, even though no evidence may be forthcoming upon the point. See *R.* v. *Field* (1895), 64 L. J. M. C. 158, where a Gosport grocer had sold a packet of cocoa containing 80 per cent. of starch and sugar. The justices, who were all retired naval officers, had a large experience of cocoa, which forms one of the regular rations on His Majesty's ships. Acting on the knowledge so acquired, and without hearing any evidence as to the composition of cocoa as sold commercially, they came to the conclusion that the starch and sugar had not been added fraudulently, notwithstanding the fact that the analyst had certified that the cocoa was adulterated, and being of opinion that the offence, if any, was quite trifling, they discharged the accused under the provisions of s. 16 of the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49). Their action was approved by the court.

The principle of the above case was followed in *Shortt* v. *Robinson* (1899), 68 L. J. Q. B. 352 ; 80 L. T. 261 ; 63 J. P. 295 : 19 Cox C. C. 243, where the justices acted upon knowledge derived in the course of the case from a document which would not have been admissible as evidence in a court of law. The article in respect of which the prosecution was instituted was caper tea, and the analysis showed that the sample in question was adulterated with 3·5 per cent. of mineral matter. In the cross-examination of the analyst, a report of the authorities at Somerset House on the subject of caper tea was put to him

with a view to showing that extraneous matter is necessarily present in caper tea, owing to its method of production. The justices rightly refused to admit the report as evidence, but nevertheless read and acted upon it, acquitting the defendant, on the ground that the presence of 3·5 per cent. of extraneous matter in caper tea did not constitute an adulteration. The High Court (LAWRANCE and CHANNELL, JJ.) declined to interfere with their decision.

(*e*) **Penalty.**—The penalty upon a second conviction may be increased to £50, and upon any subsequent conviction to £100. See s. 17 of the Act of 1899 (p. 129), which also provides for the imprisonment of the offender under certain circumstances.

The penalties inflicted by some petty sessional courts for offences under the Sale of Food and Drugs Acts are wholly inadequate. See circular letter from the Home Office to clerks to justices dated July 24th, 1902, in the Appendix, *post*, p. 171.

By s. 14 of the Licensing Act, 1874, it is provided, that all convictions for selling adulterated drinks "shall be entered in the proper register of licences."

(*f*) **Burden of proof.**—It is for the defendant to prove that he is protected by any of these exceptions. See s. 24, *post*, p. 68.

(*g*) **Spirits.**—With respect to the addition of water to spirits, see s. 6 of the Act of 1879 (*post*, p. 98).

(*h*) **Proprietary medicines.**—Proprietary medicines are by this sub-section excluded from the operation of the Sale of Food and Drugs Acts. In the case of the adulteration of a proprietary medicine, therefore, the purchaser would be driven to his common law remedy. The seller might also, in certain circumstances, be liable to a prosecution under the Merchandise Marks Act, 1887 (50 & 51 Vict. c. 28), s. 2.

(*i*) **"Compounded as in this Act mentioned."**—This sub-section is practically inoperative. In *Beardsley* v. *Walton & Co.*, [1900] 2 Q. B. 1; 69 L. J. Q. B. 344; 82 L. T. 119;

64 J. P. 436; 19 Cox C. C. 447, Channell, J. said: "There is nothing in the Act as to how drugs are to be compounded. The only way in which this omission can be accounted for is that the Bill as originally drafted contained a definition of the expression 'compounded drugs' which was dropped out of it during its progress through Parliament, while the expression 'drug compounded as in this Act mentioned' was left in by an oversight. The result is that sub-section (3) of section 6 has practically no operation."

(*k*) **"Unavoidedly mixed."**—The Act implies reasonable care. Where the foreign ingredient is present in larger proportion than is ordinarily found in a commercial article, the practice is to regard the excessive quantity present as an adulteration; for instance, in the case of pepper, where sand is in excess. In the caper tea case referred to above (*Shortt* v. *Robinson*), it was held that owing to the method in which caper tea is produced, the presence of 3·5 per cent. of mineral matter in the tea did not constitute an adulteration, and that the seller was protected by this sub-section.

In *Warnock* v. *Johnstone* (1881), 8 Rettie (J.C.), 55; 4 Coup. 509, the defendant was prosecuted for selling buttermilk adulterated with 30 per cent. of added water. It was proved that the addition of some water was necessary in the process of manufacture, but that the quantity varied, and depended for the most part upon the state of the temperature. The High Court of Justiciary in Scotland held that the defendant was excused under sub-s. (4). This percentage seems extremely high. See the chemical note on the adulteration of milk, *post*, pp. 183, 184.

In *Bosomworth* v. *Bridge* (1892), 36 Sol. J. 594, a butterman was convicted of selling butter containing 21½ per. cent. of water. In stating a case for the opinion of the High Court the magistrates said that evidence had been given on behalf of the defendant to show that the water had been unavoidably mixed in the course of preparation, and also that it had been added in order to make the butter in a fit state for carriage, but they did not say whether they believed the evidence or

not. WRIGHT and COLLINS, JJ., sent the case back for them to find the facts definitely on this question. Compare *Pearks* v. *Knight*, *ante*, p. 22.

See also the remarks of Lord ALVERSTONE, C.J., at the end of his judgment in *Goulder* v. *Rook*, cited *ante*, p. 25.

7. *Compound articles of food and compounded drugs.*—No person shall sell any compound article of food or compounded drug which is not composed of ingredients in accordance with the demand of the purchaser, under a penalty (*a*) not exceeding twenty pounds.

This section would seem to be intended to apply to such foods as are universally known and sold as compound articles, the composition of which is distinctly recognised or indicated. In the case of "drugs," it applies more particularly to "prescriptions" or "recipes," medical or otherwise, and it would be an offence under the section when they are not compounded in strict accordance with them. Any offence under this section is also punishable under s. 6 (*ante*); see *Beardsley* v. *Walton*, [1900] 2 Q. B. 1; 69 L. J. Q. B. 344; 82 L. T. 119; 64 J. P. 436; 19 Cox C. C. 447; and *Dickins* v. *Randerson*, [1901] 1 K. B. 437; 70 L. J. K. B. 344; 84 L. T. 204; 65 J. P. 262; 19 Cox C. C. 643. This accounts, no doubt, for the very few prosecutions which have taken place under s. 7.

(*a*) **Penalty.**—See note (*e*) to s. 6, *supra*, p. 27.

8. *Protection from offences by giving label.*—Provided that no person shall be guilty of any such offence as aforesaid in respect of the sale of an article of food or a drug mixed with any matter or ingredient not injurious to health, and not intended fraudulently (*a*) to increase its bulk, weight, or measure,

or conceal its inferior quality, if at the time of delivering such article or drug he shall supply to the person receiving the same a notice (*b*), by a label distinctly and legibly written or printed (*c*) on or with the article or drug, to the effect (*d*) that the same is mixed.

(*a*) "**Fraudulently.**"—When a mixture is sold in a labelled package, the justices must determine whether the admixture has been made for any of the fraudulent purposes mentioned in the section. This is, of course, purely a question of fact, as will be seen from the following cases. It is no defence to plead that the article was sold in the same state as when it was received from the manufacturer.

In *Liddiard* v. *Reece* (1880), 44 J. P. 233, when the inspector asked for coffee he received a packet with a label describing it as a mixture of coffee and chicory. The analyst's certificate showed that it was composed of 60 per cent. of chicory and 40 per cent. of coffee. The magistrates decided that the seller was not protected by the label, as the 60 per cent. of chicory was used for the purpose of fraudulently increasing the bulk or weight of the coffee, and convicted the defendant. This conviction was upheld in the High Court.

In *Horder* v. *Meddings* (1880), 44 J. P. 234, a mixture was sold under similar circumstances to those in *Liddiard* v. *Reece*, *supra*, except that the mixture contained 85 per cent. of chicory instead of 60. The defendant, besides pleading the label in defence, urged that he sold the article in the condition in which he received it from the manufacturer. The magistrate found that the chicory had been added fraudulently. This decision was upheld by the High Court; and LUSH, J., said that the magistrate was bound to find whether the chicory was used fraudulently to increase the bulk; that if it was so used he ought to convict, notwithstanding the label; and that it was no defence for the vendor to say that he sold it just as he had received it from the manufacturers.

In *Otter* v. *Edgley* (1893), 57 J. P. 457, the facts were

somewhat different. An inspector had entered a shop and asked for "French coffee," and had been supplied with a mixture containing 60 per cent. of chicory and 40 per cent. of coffee. Upon the tin was a label stating that it was a mixture, and his attention had been called to the label. There was also evidence that "French coffee" was a well-known commodity, and that the description was not misleading; but the magistrates had convicted the seller on the ground that the chicory had been added fraudulently to increase the bulk, etc. The High Court, however, held that there had been no evidence of fraud, that the seller was protected by the label, and that the conviction was wrong.

A similar decision was given in *Jones* v. *Jones* (1894), 58 J. P. 653. The mixture sold in that case consisted of 30 per cent. of cocoa and 70 per cent. of starch and sugar, and it was held that a label stating it to be a mixture, in the absence of any evidence of fraud (nearly all cocoas, it will be remembered, are mixtures), was a sufficient protection to the seller.

In *Hayes* v. *Rule and Law* (1902), 87 L. T. 133 : 18 T. L. R. 535, the purchaser asked for "best fresh butter," and was supplied with "Pearks' butter," *i.e.*, a mixture of butter and milk, containing over 20 per cent. of water. The butter was handed to him in a wrapper on which was a printed label in the same terms as that in *Pearks* v. *Houghton*, *post*, p. 32). The justices considered that although the butter was not "best fresh butter," yet the defendants were protected by the label, and the King's Bench Division held that they were right.

(*b*) **Notice.**—A question sometimes arises as to whether the attention of the purchaser need be called to the notice on the label or not. In *Jones* v. *Jones*, *supra*, the tin of cocoa in question with the label upon it, was wrapped in a sheet of opaque white paper before delivery to the purchaser, who had no opportunity of seeing the label, nor was his attention called to it. The cocoa was sold at 8*d.* per pound, the price of the best pure cocoa being 2*s.* 8*d.* per pound. MATHEW and CAVE, JJ., held that sufficient notice had been given, and MATHEW, J., said : "There was a label which distinctly stated

that the article was mixed. It has been seriously contended that it was no label, because it was wrapped up in opaque paper at the time of being sold. The paper covering was merely the usual way of giving the article to a purchaser. The article has been sold so mixed for thirty years, and must have been well-known to purchasers. To say that there was no label because of its being wrapped up, is an absurdity."

This case was distinguished in *Pearks, Gunston and Tee, Limited* v. *Houghton*, [1902] 1 K. B. 889 ; 71 L. J. K. B. 385 ; 86 L. T. 325 ; 50 W. R. 605 ; 66 J. P. 422, where the appellants sold butter blended with milk in such a way as to cause the butter to contain an excess of water to the extent of 7·8 per cent. They sold it as butter in a wrapper on which was a label in the following terms : "Pearks' butter. This is choicest butter, blended with pure English full cream milk, by new and improved machinery, whereby it retains about 20 to 24 per cent. of moisture, and acquires that delicacy of flavour which has made Pearks' butter so famous. This package weighs half pound including wrapper." The printed wrapper was in turn enclosed in a second wrapper which effectually concealed the printed matter. Lord Alverstone, C.J., and Darling and Channell, JJ., expressed an opinion that the appellants would not be entitled to rely upon the provisions of s. 8, owing to the presence of the opaque wrapper, and Lord Alverstone, C.J., said : "In my opinion, the delivery of the article with a notice printed on an inner label covered with an opaque wrapper would not be sufficient. *Jones* v. *Jones* is not a sufficient authority on the facts of the present case. There the article sold was a tin of cocoa, and it was assumed to be a matter of common knowledge that tins had labels on them, and therefore the fact that they were wrapped up when delivered to the purchaser could not prevent the label having the effect of a notice to the purchaser. The question of the sufficiency of the notice is one to be decided on the particular facts of each case ; but I doubt whether a purchaser of a pound of butter on being handed such a packet could be taken to have notice that there was another label inside the outside wrapper. If, therefore, the inner label were the only defence relied upon

by the appellants, I should not be prepared to say that their contention was right." For the other defence upon which the decision of the case really turned, see note (*b*) to s. 6, *ante*, p. 16. On the question of the second wrapper concealing the printed matter on the first, compare *World's Tea Company* v. *Gardner* and *Toler* v. *Bischop*, *post*, p. 106.

Other means of giving notice.—It should, of course, be borne in mind that the delivery of a label in accordance with the requirements of s. 8 is not the only means available for giving the purchaser notice of what he is purchasing. In *Sandys* v. *Small*, *ante*, p. 14, Lord COCKBURN, C.J., said in his judgment : "Section 8 provides a mode by which the seller may insure himself against the possibility of the enactment operating to his prejudice. If he delivers the label as provided by that section, he protects himself against the possibility of being charged with an offence under the Act. If he does not, then I think it is incumbent on him to prove that by some other means the purchaser had notice of what he was purchasing. . . . I do not think the statute means that the affixing of the label is to be the only mode of bringing knowledge home to the purchaser. I think if a man puts up in a conspicuous position a notice in large letters, as was done here, and it is clear that it must have come under the observation of the customer, that the 6th section would not apply." This proposition is well illustrated by *Gage* v. *Elsey*, *ante*, p. 14, *Higgins* v. *Hall*, *ante*, p. 14, in which notice was given verbally, and the other cases collected under note (*b*) to s. 6, *ante*, *q.v.* Care should also be taken not to confuse the two kinds of defence. The label supplied on or with the article sold constitutes a defence under s. 8, but where the purchaser's attention is called to the true nature of the article sold by a notice either given verbally or displayed upon the premises, the seller's ground of defence is that the sale was not to the prejudice of the purchaser within the meaning of s. 6. In *Wadd* v. *Brayly* (1887), 51 J. P. 423, which was an appeal to quarter sessions, a grocer was convicted under s. 6 of selling butterine as butter. He sold both butter and butterine, and it was his custom, when exposing the two for sale, to distinguish

them by placards placed in his shop window. But on the particular occasion in question the placards had been removed in order that the windows might be cleaned. The learned recorder who tried the case is reported to have said that had it not been for this the grocer would have had a defence under s. 8, but if he did say so, he was wrong to this extent, that although the grocer would have undoubtedly had a defence, it would not have been a defence under s. 8, but a defence that the purchaser was not prejudiced within the meaning of s. 6.

(*c*) "**Legibly written or printed.**"—An interpretation of these words is given in s. 12 of the Act of 1899, *post*, p. 127.

(*d*) "**To the effect that the same is mixed.**"—These words in themselves make it perfectly plain that it is not necessary to state with what, or to what extent, the article has been mixed; only a general statement that it is a mixture need be given; see *Otter* v. *Edgley* and *Jones* v. *Jones* in note (*a*), *supra*. Similarly in *Pope* v. *Tearle* (1874), L. R. 9 C. P. 499; 43 L. J. M. C. 129; 30 L. T. 789; 22 W. R. 950; 37 J. P. 485, a case decided under s. 3 of the repealed Act of 1872, which made it an offence to sell certain mixed articles of food without "declaring such admixture" to the purchaser, a grocer had sold mustard mixed with flour and turmeric. There was a label on the canister "Warranted free from injurious admixture, but not sold as pure mustard." The court (Lord Coleridge, C.J., and Brett and Grove, JJ.) held that the label was sufficient, and that the grocer was not bound to declare "the nature or quantities of the materials admixed."

9. *Abstraction of part of an article of food before sale.*—No person shall, with the intent that the same may be sold in its altered state without notice, abstract (*a*) from an article of food any part of it so as to affect injuriously its quality, substance, or nature, and no person shall sell (*b*) any article so altered without making disclosure (*c*) of the alteration, under

a penalty in each case not exceeding twenty pounds (*d*).

This section applies to the abstraction of an important ingredient of any commodity; but it was specially intended to make the removal of cream from milk a punishable offence. It would seem at first sight as though the provisions of this section were already covered by those of s. 6, and that an offence under this section would also be punishable under the earlier one. But this is not so. Section 6 says: "No person shall sell," etc., whereas this section is also aimed against anyone who "shall, with the intent that the same may be sold in its altered state without notice, abstract from an article of food any part of it," etc., whether he be the actual seller or not. It should further be noticed that s. 8 does not apply to this section, and that therefore the giving of a label is no defence to a prosecution under this section, unless the label sufficiently discloses the nature of the alteration, and unless the purchaser's attention is called to it at the time of the sale. See notes (*a*) and (*b*), *infra*. For the question whether a warranty affords a defence to a prosecution under this section, see note (*b*) to s. 25, *post*, p. 69.

(*a*) **"Abstract."**—By the Sale of Milk Regulations, 1901, *post*, p. 154, if a sample of milk contains less than 3 per cent. of milk fat, or 8·5 per cent. of non-fatty solids, or a sample of skimmed or separated milk contains less than 9 per cent. of milk solids, it is to be presumed that abstraction has taken place or that water has been added.

(*b*) **Guilty knowledge.**—If at the time of sale the vendor gives due notice to the purchaser that the cream has been abstracted, he is not liable under this section. But if no such notice has been given, it is no defence to a prosecution under this section for him to plead that he had no knowledge of the alteration at the time of the sale—unless, of course, he can produce a written warranty in accordance with the provisions of s. 25, *post*. This point has been authoritatively settled by the case of *Pain* v. *Boughtwood* (1890), 24 Q. B. D. 353;

59 L. J. M. C. 45 ; 62 L. T. 284 ; 38 W. R. 428 ; 54 J. P. 469 ; 16 Cox C. C. 747. This was a case stated by one of the metropolitan police magistrates. The respondent, a milk-seller, had sold milk from which 28 per cent. of the original fat had been abstracted, without making disclosure of the alteration. No evidence was given that the person selling the milk had knowledge of the alteration, and the respondent gave evidence that he had no such knowledge. His daughter, who sold the milk, also denied all knowledge of the alteration. The magistrate, for this reason, had dismissed the summons ; but the court held that he was wrong, and that a person selling the altered article could be convicted under s. 9, although at the time he sold it he did not know of the alteration. In the course of his judgment Grantham, J., said : " . . . by s. 25 the seller is given a power of protecting and exonerating himself by obtaining a written warranty from the person who has supplied the article to him. In the present case, the respondent ought to have provided himself with a written warranty, and then he could have handed it over to the inspector, who could thereupon have proceeded against the person who had actually committed the fraud. If that course is not taken, the legislature assumes that the seller has been a party to what has been done. Every precaution is taken in the statute to enable a person honestly selling the article without knowledge to defend himself against a charge made under s. 9." Charles, J., added that *Betts* v. *Armstead*, *ante*, p. 10, was a judicial exposition of the meaning of the Act, and must be followed.

This decision was followed in *Dyke* v. *Gower*, [1892] 1 Q. B. 220 ; 61 L. J. M. C. 70 ; 65 L. T. 760 ; 56 J. P. 168 ; 17 Cox C. C. 421, which was also a case stated by a metropolitan police magistrate. The facts were as follows : The respondent, a retail milk-seller, poured into a pail eight gallons of unskimmed milk, which she sold therefrom to her customers in small quantities, dipping it out of the pail from time to time with a measure. The sale of the contents of the pail extended over a space of between four and five hours, during the whole of which time, owing to the neglect of the respondent to keep the

milk stirred, the cream was continually rising to the surface. When not more than two quarts of milk remained, the appellant purchased of the respondent a pint of milk from the pail, which, upon analysis, showed a deficiency of 33 per cent. of fatty matter. The respondent did not disclose to the appellant this deficiency, which was entirely due, as will have been seen, to the manner in which the earlier customers had been served. The magistrate dismissed the summons; but Lord COLERIDGE, C.J., and WRIGHT, J., held that the words "so altered" in the section refer to a physical alteration of the article, irrespective of the intent with which the alteration is made, and that the respondent, in selling the milk so altered without giving notice of its condition, had been guilty of an offence under this section. Lord COLERIDGE said: "It is not necessary in the interests of the public to prohibit the mere alteration of an article of food unless the alteration is coupled with the intent of selling it in its altered state without notice, for the mere alteration without such intention may be perfectly innocent. Where, however, the alteration is followed by the actual sale, the intent with which the article was altered must become perfectly immaterial, the injury to the purchaser being just the same whether there was a wrongful intent or not."

In *Morris* v. *Corbett* (1892), 56 J. P. 649, the facts were as follows: The servant of a dairyman, being short in his supply of milk, bought two gallons from another dairyman and mixed it with his own. The milk so mixed he sold to various customers. An inspector bought half a pint of it, and it was found to be deficient in cream to the extent of 20 per cent. The dairyman was accordingly prosecuted under this section. The magistrates were of opinion that he had a good defence; but the High Court held that, though neither the dairyman nor his servant knew, or had reason to know, that cream had been abstracted from the milk, this was no defence, and that the case was governed by *Pain* v. *Boughtwood*, *ante*, p. 35, and *Dyke* v. *Gower*, *ante*, p. 36.

The same ruling was given in *Spiers and Pond* v. *Bennett*. (See note (*c*) below.)

Special contract.—A special contract between vendor and purchaser as to the quality of the article to be delivered by the former is no bar to a conviction under this section. In *Fecitt* v. *Walsh*, [1891] 2 Q. B. 304 ; 60 L. J. M. C. 143 ; 65 L. T. 82 ; 39 W. R. 525 ; 55 J. P. 726 ; 17 Cox C. C. 322, the appellant contracted to supply milk to a workhouse at a certain price ; by the contract the milk was to contain a certain percentage of cream, and it was to be tested on each delivery, and a reduction was to be made in the price in respect of any deficiency in cream. When the daily supply, contained in five cans, was being delivered, the respondent, acting under s. 3 of the Act of 1879 (*q.v.*), procured a sample from each of the five cans, and subsequently laid informations in respect of two of the samples, in which there was found to be a large deficiency of cream, under this section :—*Held*, that the provisions in the contract as to deficiency of cream were immaterial in the determination of the question whether the appellant had committed an offence under the Act. *Held*, also, that there could be two separate informations in respect of the two samples found to be deficient. (See also under s. 3 of the Act of 1879, *post*, p. 96.)

(*c*) **"Disclosure."**—The question what is or what is not a sufficient disclosure to satisfy the requirements of this section has been dealt with by the following cases :—In *Jones* v. *Davies* (1893), 69 L. T. 497 ; 57 J. P. 808, Davies sold a tin of condensed milk which had upon it a label on which were printed the words, "Condensed Milk, Swiss Dairy Brand," and in smaller type : "This tin contains skimmed milk." The analysis of the contents of the tin showed a deficiency of 93 per cent. of butter fat ; but though the purchaser's attention had not been called to the words on the label at the time of the sale, the court held that this was a sufficient "disclosure of the alteration" under this section. This case was followed in *Platt* v. *Tyler* (1894), 58 J. P. 71.

In *Spiers and Pond* v. *Bennett*, [1896] 2 Q. B. 65 ; 65 L. J. M. C. 144 ; 74 L. T. 697 ; 44 W. R. 510 ; 18 Cox C. C. 332 ; 60 J. P. 437, Messrs. Spiers and Pond, the well-known refresh-

ment contractors, were prosecuted under this section for selling milk from which 17 per cent. of cream had been extracted. The deficiency was caused by the milk being poured out in such a way that the greater part of the cream remained in the vessel from which it was poured. The milk was supplied in a glass, whereon were distinctly written in blue colour the words : "Not guaranteed as new or pure milk, or with all its cream ; see notices." On the counter a few feet from the place where the purchaser was standing when he was served with the milk, and facing the entrance to the refreshment rooms from the street was placed a framed notice in these words :—"Milk notice. Spiers and Pond, Limited, purchase all milk sold by them under a warranty of its purity and genuine quality, and take all possible precautions to ensure its supply to their customers in proper condition, but they are unable to guarantee it as either new, pure, or with all its cream, and (to meet the requirements of the Sale of Food and Drugs Act) do not therefore sell it as such." The High Court (Lord Russell of Killowen, C.J., and Wills, J.), reversing the decision of a metropolitan police magistrate, held the alteration in the milk was sufficiently disclosed.

In *Petchey* v. *Taylor* (1898), 78 L. T. 501 ; 62 J. P. 360 ; 19 Cox C. C. 38, a tin of condensed milk was sold as "condensed skimmed milk" ; 97 per cent of the original fat had been abstracted by the use of a separator. It was proved that not more than 63 per cent. can be abstracted by skimming. The magistrate held that the description "skimmed milk" did not properly describe the alteration. The High Court held that it was a question of fact whether the description was sufficient, and that the magistrate's decision could not be interfered with. It seems somewhat difficult to reconcile this case with *Jones* v. *Davies*, *supra*, in which the facts were very similar, but Wills, J., in his judgment, pointed out that in *Jones* v. *Davies* no evidence was given to show how much cream can be abstracted by skimming, and consequently the point upon which the magistrate decided the later case was never taken.

Petchey v. *Taylor* seems also to differ from its predecessors,

Jones v. *Davies* and *Spiers and Pond* v. *Bennett*, in this : that, while in *Petchey* v. *Taylor* it was definitely held that the question of sufficient disclosure is one of fact for the magistrate, with which the court will not interfere, in the two earlier cases the court, after reviewing the facts, reversed the magistrate's decision. The explanation probably is, that the court in the two earlier cases were really of opinion (though they do not appear to have said so in so many words) that there was no evidence at all upon which the magistrates could find as they did.

(*d*) **Penalty**.—The penalty upon a second conviction may be increased to £50, and upon any subsequent conviction to £100. See s. 17 of the Act of 1899 (p. 129), which also provides for the imprisonment of the offender under certain circumstances.

The penalties inflicted by some petty sessional courts are quite inadequate. See Circular Letter from the Home Office to Clerks to Justices, dated July 24th, 1902, in the Appendix, *post*, p. 171.

Appointment and Duties of Analysts, and Proceedings to obtain Analysis.

10. *Appointment of analysts.*—In the city of London and the liberties thereof the Commissioners of Sewers of the city of London and the liberties thereof, and in all other parts of the metropolis the vestries and district boards acting in execution of the Act for the better local management of the metropolis (*a*), the court of quarter sessions of every county (*b*), and the town council of every borough (*c*) having a separate court of quarter sessions, or having under any general or local Act of Parliament or otherwise a separate police establishment, may, as soon as convenient after the passing of this Act, where no appointment has been hitherto made, and in all cases as and when vacancies in the

office occur, or when required so to do by the Local Government Board, shall, for their respective city, districts, counties, or boroughs, appoint one or more persons possessing competent knowledge, skill, and experience, as analysts of all articles of food and drugs sold within the said city, metropolitan districts, counties, or boroughs, and shall pay to such analysts such remuneration as shall be mutually agreed upon, and may remove him or them as they shall deem proper ; but such appointments and removals shall at all times be subject to the approval of the Local Government Board, who may require satisfactory proof of competency (*d*) to be supplied to them, and may give their approval absolutely or with modifications as to the period of the appointment and removal, or otherwise : Provided, that no person shall hereafter be appointed an analyst for any place under this section who shall be engaged directly or indirectly in any trade or business connected with the sale of food or drugs in such place.

In Scotland the like powers shall be conferred and the like duties shall be imposed upon the commissioners of supply (*e*) at their ordinary meetings for counties, and the commissioners or boards of police, or where there are no such commissioners or boards, upon the town councils for boroughs within their several jurisdictions : Provided that one of Her Majesty's Principal Secretaries of State in Scotland shall be substituted for the Local Government Board of England.

In Ireland the like powers and duties shall be conferred and imposed respectively upon the grand jury (*f*) of every county and town council of every borough : Provided that the Local Government Board

of Ireland shall be substituted for the Local Government Board of England.

(*a*) "**Vestries and district boards,**" now metropolitan boroughs (London Government Act, 1899 (62 & 63 Vict. c. 14)).

(*b*) "**Quarter sessions,**" now county councils (see s. 3 of the Local Government Act, 1888 (51 & 52 Vict. c. 41)).

(*c*) **Borough analysts.** — The appointment of borough analysts has also been considerably altered by the Local Government Act, 1888 ; see ss. 34, 35, 38, 39. Their provisions are somewhat obscure, but the general effect of them appears to be as follows : By ss. 34 and 35 in all county boroughs (*i.e.*, the boroughs enumerated in the third schedule to the Act), and in all quarter sessions boroughs, containing a population of 10,000 or upwards by the census of 1881, the borough analyst is to be appointed by the town council, and by ss. 38 and 39, the borough analyst is to be appointed in all other cases by the county council. It appears to be somewhat uncertain whether, in the case mentioned in s. 38, the borough is to be under the county analyst, or whether the county council must appoint a separate analyst for the borough ; but the point is of little importance, since the county council can appoint as many analysts as they like for the whole county, and by s. 11 of this Act, a county analyst may also be appointed analyst of a borough.

(*d*) **Proof of competency.**—See s. 3 (5) of the Act of 1899, and the regulations therein referred to.

(*e*) "**Commissioners of supply,**" now county councils (see s. 11 (1) of the Local Government (Scotland) Act, 1889 (52 & 53 Vict. c. 50)).

(*f*) "**Grand jury,**" now county councils (see Local Government (Ireland) Act, 1898).

11. *Town council may engage the analyst of another borough or of the county.*—The town council of any

borough (*a*) may agree that the analyst appointed by any neighbouring borough or for the county in which the borough is situated, shall act for their borough during such time as the said council shall think proper, and shall make due provision for the payment of his remuneration, and if such analyst shall consent, he shall during such time be the analyst for such borough for the purposes of this Act.

(*a*) **Borough analysts.**—See note (*c*) to s. 10 above.

12. *Power to purchaser of article of food to have it analysed.*—Any purchaser (*a*) of an article of food or of a drug in any place being a district, county, city, or borough where there is any analyst appointed under this or any Act hereby repealed shall be entitled, on payment to such analyst of a sum not exceeding ten shillings and sixpence, or if there be no such analyst then acting for such place, to the analyst of another place, of such sum as may be agreed upon between such person and the analyst, to have such article analysed (*b*) by such analyst, and to receive from him a certificate of the result of his analysis (*c*).

(*a*) "**Any purchaser,**"—*i.e.*, whether official or private.

(*b*) **Private purchaser.**—It was formerly a disputed question whether a private purchaser, in buying an article for consumption and having it analysed in pursuance of this section, should conform to the provisions of s. 14, *infra*, but the point has now been authoritatively settled by *Buckler* v. *Wilson*, [1896] 1 Q. B. 83 ; 65 L. J. M. C. 18 ; 73 L. T. 580 ; 44 W. R. 220 ; 60 J. P. 118 (see the notes to s. 14, *infra*), a case which also goes to show that in the case of a purchase for consumption by a private purchaser, the analysis need not be made by an official analyst. But if a

private analyst is employed he would have to be called at the hearing of the information, since his certificate would probably not be admissible in evidence under s. 21. See also note (*a*) to s. 20, *post*, p. 61.

(*c*) By s. 19 of the Act of 1899 a copy of any analyst's certificate obtained by the prosecutor must be served along with the summons. See p. 131, *post*.

13. *Officer named to obtain a sample of food or drug to submit to analyst.*—Any medical officer of health, inspector of nuisances, or inspector of weights and measures, or any inspector of a market, or any police constable under the direction (*a*) and at the cost of the local authority (*b*) appointing such officer, inspector, or constable, or charged with the execution of this Act (*c*), may procure any sample of food (*d*) or drugs, and if he suspect the same to have been sold to him contrary to any provision of this Act, shall submit the same to be analysed (*e*) by the analyst of the district or place for which he acts, or if there be no such analyst then acting for such place to the analyst of another place ; and such analyst shall, upon receiving payment as is provided in the last section, with all convenient speed analyse the same and give a certificate (*f*) to such officer, wherein he shall specify the result of the analysis.

(*a*) **Direction of local authority.**—In *Hale* v. *Cole* (1891), 55 J. P. 376, the appellant was a police constable, and the prosecution was under s. 6 for selling gin 44·9 degrees under proof. The constable when he purchased the gin did not prove that he was acting under the direction of the local authority, and the magistrates on these grounds dismissed the prosecution. The High Court, however (Day and Lawrance, JJ.), held that where a constable prosecutes for the adulteration of food,

it is not necessary to prove as a condition precedent that he was directed by the local authority appointing him such constable to prosecute, and judgment was accordingly given for the appellant.

In *Connor* v. *Butler*, [1902] 2 I. R. 569, *post*, p. 117, the majority of the judges of the King's Bench Division in Ireland held that the local authority has performed its duty by appointing an inspector, and that when an inspector has once been appointed, he may take any proceedings at his own discretion and without any special authorisation from the authority appointing him.

(*b*) **Further provisions.**—Power is also given by s. 2 of the Act of 1899 (*post*, p. 116), to the Local Government Board and the Board of Agriculture, under certain circumstances, to take samples of articles of food, and for this purpose their officers have the same powers as inspectors appointed under the Sale of Food and Drugs Acts. The Commissioners of Customs have also power to take samples of imported articles under s. 1 of the Act of 1899 (*post*, p. 113).

(*c*) **Purchase by deputy.**—The effect of this is that the local authority cannot appoint any person other than those named to procure samples for analysis under the Acts ; but any officer appointed under this section to procure samples may purchase them by deputy. Thus, in *Horder* v. *Scott* (1880), 5 Q. B. D. 552 ; 48 L. J. M. C. 97 ; 42 L. T. 660 ; 44 J. P. 520, 795, it was decided that it was not necessary that the officer taking proceedings under s. 20, *post*, should have acted personally in the purchase of the sample.

This decision was followed in *Smith* v. *Stace* (1881), 45 J. P. 141. Here a sanitary inspector went with an assistant to a shop where butter was sold, and sent the assistant into the shop, who bought a pound of butter for a shilling. The assistant came out and gave it to the inspector, who. within two minutes, went inside the shop, and gave notice to the shopkeeper that he had bought it for analysis, and he then and there divided it into parts in pursuance of s. 14 of the Act.

The information was then laid by the inspector, and the Court held that the purchaser of the article was the inspector, and not the assistant, and that therefore the inspector had properly given notice to the shopkeeper and laid the information.

In *Garforth* v. *Esam* (1892), 56 J. P. 521, an inspector sent his servant into a public-house to buy gin. When the servant had been inside the house a minute and had paid for the gin with money supplied to him by the inspector for that purpose, the inspector entered, gave the usual notification, and ultimately laid an information against the seller. For the defence it was contended that the inspector did not purchase the gin, that there was no evidence of purchase of gin before the Court, and that the servant purchased the gin, and ought, therefore, to have laid the information, or to have been joined as the person prejudiced. The justices dismissed the information on the ground that the inspector was not prejudiced, but stated a case, and the High Court (Lawrance and Wright, JJ.) held that they were wrong in so deciding, and gave judgment for the appellant. Similarly, in *Macaulay* v. *Mackirdy* (1893), 3 White's Rep. (Sc.) 464, an inspector's duly authorised assistant went to a grocer's shop accompanied by a boy. The boy went in and bought half a pound of salt butter. The assistant then went in and laid his hand on the butter and said it was for the public analyst. The butter proved to be margarine. It was argued for the grocer that the conviction by the sheriff substitute was bad, as it is only the actual purchaser who can prosecute, but the High Court of Justiciary held that the conviction was right, and the Lord Justice Clerk said, "I hold that a person who sends a messenger to buy the article of food for him is the purchaser within the meaning of the Act."

In *Massey* v. *Kelso* (1902), 4 Fraser (J.C.) 73; 39 Sc. L. R. 645, an inspector asked a street scavenger to go into a shop and buy butter, and gave him the money. The scavenger did so, whereupon the inspector walked into the shop, and took over the butter. The shopman was prosecuted for selling to the inspector, but objected that the sale was to the scavenger. The Court of Justiciary in Scotland overruled the objection.

(*d*) **Sample of food.**—For directions as to the manner in which samples should be taken, and as to the proper size of the samples, see letter of the Local Government Board, dated February 26th, 1894, and circulars of the Board of Agriculture, dated December 28th, 1901, and July 13th, 1903, in the Appendix, *post*, pp. 162, 167, 172. For seizure and destruction of unsound meat, milk, bread, etc., by any medical officer of health or inspector of nuisances, see ss. 116—119 of the Public Health Act, 1875.

(*e*) **Analysis must be made.**—Where an official purchaser purchases for analysis, it is necessary that the analysis should be actually made, and such analysis is a condition precedent to a prosecution under the Act, even though the seller admits at the time of the sale that the article sold is adulterated (*Smart* v. *Watts*, [1895] 1 Q. B. 219; 64 L. J. M. C. 89; 71 L. T. 768; 43 W. R. 379; 18 Cox C. C. 62; 59 J. P. 54). See note (*e*) to s. 14, *infra*. But in the case of a purchase by a private individual an analysis is apparently not a condition precedent to a prosecution. See note (*a*) to s. 20, *post*, p. 61.

(*f*) **Certificate.**—By s. 19 of the Act of 1899 a copy of any analyst's certificate obtained by the prosecutor must be served with the summons. See p. 131, *post*.

14. *Provision for dealing with the sample when purchased.*—The person purchasing (*a*) any article with the intention of submitting the same to analysis shall (*b*), after the purchase shall have been completed, forthwith (*c*) notify to the seller or his agent (*d*) selling the article his intention to have the same analysed (*e*) by the public analyst, and shall [*offer to*] (*f*) divide the article into three parts (*g*) to be then and there separated (*h*), and each part to be marked and sealed or fastened up in such manner as its nature will permit, and shall, if required to do so [*proceed accordingly, and shall*] (*f*) deliver one of the parts to the seller or his agent (*d*).

He (*i*) shall afterwards retain one of the said parts (*k*) for future comparison and submit the third part, if he deems it right to have the article analysed, to the analyst.

(*a*) **"The person purchasing."**—Although prior to 1895 there was some doubt upon the point, it is now well settled that the provisions of this section do not apply to the case of a private purchaser purchasing for consumption. In *Parsons* v. *Birmingham Dairy Co.* (1882), 9 Q. B. D. 172 ; 51 L. J. M. C. 111 ; 30 W. R. 748 ; 46 J. P. 727, it was decided that it is a condition precedent to the right of a private purchaser to take proceedings for a penalty under the Act that he should have given to the seller the notification required by s. 14, and this case was followed by Mathew and Wills, JJ., in *Harris* v. *Williams* (1889), 6 T. L. R. 47. But this view was dissented from by the Irish judges in *Enniskillen Union (Guardians)* v. *Hilliard* (1884), 14 L. R. Ir. 214, where it was held that the provisions of s. 14 do not apply to the purchase of an article *unless for analysis*, and therefore it is not a condition precedent to the right of a purchaser *for consumption* to take proceedings for a penalty under the Act that he should have given to the seller the notification required by that section. A similar view was taken by Lord Coleridge, C.J., in *Hotchin* v. *Hindmarsh*, [1891] 2 Q. B. 181 ; 60 L. J. M. C. 146 ; 65 L. T. 149 ; 39 W. R. 607 ; 57 J. P. 775, where he said (at p. 187) : "Sections 12, 13, 14, 15, and 17 all deal with cases in which the article is not bought *for purposes of use as food*, but for the purpose of *submitting it to analysis*" ; and the point has now been authoritatively decided by *Buckler* v. *Wilson*, [1896] 1 Q. B. 83 ; 65 L. J. M. C. 18 ; 73 L. T. 580 ; 44 W. R. 220 ; 60 J. P. 118. In this case a prosecution was instituted by private purchasers (the guardians of the Louth Union) with whom a grocer had entered into a contract for the supply of "Good fresh butter, English." A parcel of butter supplied under this contract was found upon analysis to contain twenty-five per cent. of margarine, but the provisions of s. 14 were not complied with by the guardians, and the grocer contended that compliance

with the provisions of the section was a condition precedent to a prosecution under the Act. The magistrates nevertheless convicted him, and the High Court (Lord Russell of Killowen, C.J., Pollock, B., and Wright, J.) upheld the conviction. Lord Russell, in delivering the judgment of the court, said, "Two decisions were cited to us, one *Parsons* v. *Birmingham Dairy Co.* [*supra*], in which Field and Cave, JJ., not expressly, but inferentially, decided that s. 14 applies to every purchaser whether purchasing with the intention of obtaining an analysis or not; the other *Enniskillen Union* (*Guardians*) v. *Hilliard* [*supra*], in which Dowse, B., and Andrews, J., expressly dissented from that decision. I agree with the reasoning of the learned judges in the Irish case, and I entirely adopt the view of the Act expressed by them. It seems to me that to adopt the contention of the appellant in this case would be to largely restrict the operation of a salutary Act, and to exclude that class of cases of which the present is an example, where there is a contract for the delivery of provisions within the Act which may extend over a considerable period of time, and also the class of cases in which provisions are purchased from time to time in small bulk without any suspicion at the time of purchase of any deceit being practised by the seller."

It has been held that the provisions of this section need not be complied with in the case of a prosecution under s. 17 for refusing to sell. In the Irish case of *Clarkin* v. *McCartan* (1888), 22 Ir. L. T. 95, an inspector went into a public-house and asked for whisky out of a particular barrel. The publican refused to serve him. The inspector never at any time said that he was an inspector, or that he wanted the whisky for analysis, but it was held by the Exchequer Division that s. 14 does not apply to prosecutions under s. 17, and that the publican was rightly convicted. It is certainly difficult to see how any other decision could possibly have been arrived at. The formalities prescribed by s. 14 are only to be observed "after the purchase shall have been completed," whereas s. 17 deals with the case of a refusal to sell, and therefore with a case in which no purchase can possibly have been completed.

It further follows, from the subjoined cases, that an officer taking a sample under s. 3 of the Act of 1879, *post*, p. 93, need not comply with the provisions of this section. In *Rouch* v. *Hall* (1880), 6 Q. B. D. 17 ; 50 L. J. M. C. 6 ; 29 W. R. 304 ; 45 J. P. 220, it was decided that where milk is in course of delivery, and a sample of it is procured for analysis under s. 3 of the Act of 1879, it is not necessary for the officer procuring such sample to notify to the seller or his agent his intention of having the sample analysed, or to deliver to the seller or his agent a portion of the sample in accordance with the provisions of s. 14 of the principal Act. Similarly in *Rolfe* v. *Thompson*, [1892] 2 Q. B. 196 ; 61 L. J. M. C. 184 ; 67 L. T. 295 ; 56 J. P. 425 ; 17 Cox C. C. 551, it was held that the provisions of s. 15, *post* (now repealed by the Act of 1899), need not be complied with in the case of a sample taken under s. 3 of the Act of 1879. In Scotland in the case of *Morton* v. *Fyfe* (1896), 24 Rettie (J. C.), 9 ; 2 Adam. 174 ; 34 Sc. L. R. 55, the two cases above referred to were followed, though with great hesitation.

(*b*) **Notification of analysis by purchaser.**—When a sample is taken by an official purchaser for analysis the provisions of this section must be strictly complied with. Thus, in *Barnes* v. *Chipp* (1878), 3 Ex. D. 176 ; 47 L. J. M. C. 85 ; 38 L. T. 570 ; 26 W. R. 635, it was held that the notification required to be given by the purchaser under s. 14, viz., "that the sample had been purchased for the purpose of having it analysed by the public analyst," is a condition precedent to a prosecution under the Act. In that case a constable purchased half a pint of gin and told the seller that he purchased it for the purpose of analysis, but did not add "by the public analyst," and there was apparently no evidence to show that the seller knew that there was to be an official analysis.

But it is not necessary, as might appear at first sight from *Barnes* v. *Chipp*, that the notification given by the purchaser should be made in the exact words of the section ; nor, indeed, is it necessary that any words should be used at all so long as the seller is made unmistakeably aware of what is intended. Thus,

in *Wheeler* v. *Webb* (1887), 51 J. P. 661, where a seller was informed upon purchase that the article was to be examined by the "county analyst," and he knew that the county analyst was the public analyst of the district it was held that there had been a sufficient notification under the Act. In the course of the argument, MATHEW, J., said: "You say the words 'public analyst' must be used either in speech or writing. Surely this is a superstitious adherence to form. The statute says the constable is to notify to the seller his intention to have the article analysed by the public analyst. He need not say anything if the seller knew all about what was intended"; and in delivering judgment, CAVE, J., said: " . . . no particular form of words is required, nor even any words at all. What is necessary is that the seller must know that the samples are to be taken for the purpose of analysis so that he may see that the samples are to be fairly taken." With reference to *Barnes* v. *Chipp*, he added: "The case of *Barnes* v. *Chipp* is no authority for more than this, that the seller must know that the analysis is to be made by an official person. In that case . . . the court came to the conclusion that the seller did not know that there was to be an official analysis. That was a totally different case from this, for here the justices have found that the seller did know that there was to be an official analysis."

(*c*) **"Forthwith."**—As to the construction of the word "forthwith" in this section, it was decided in *Parsons* v. *Birmingham Dairy Co.* (1882), 9 Q. B. D. 172; 51 L. J. M. C. 111; 30 W. R. 748; 46 J. P. 727, that notification two days after the delivery of the article is not notification "forthwith." And FIELD, J., said: "I think the intention of the Act is to strike at the moment of time at which the seller parts with the article." On the other hand, in *Somerset* v. *Miller* (1890), 54 J. P. 614, the appellant, an inspector, sent a constable in plain clothes into the respondent's inn to buy a bottle of gin. The constable, having purchased the gin, came out, and two minutes later both men went inside and told the respondent that the gin was purchased for analysis, divided it, etc. The gin was found to be thirty-seven degrees below proof. Upon

a prosecution the justices had held that the case must be dismissed on the ground that the object of the purchase had not been notified "forthwith," but the High Court (Lord Coleridge, C.J., and Lord Esher, M.R.) held without hesitation that the justices were wrong.

(*d*) **Agent.**—In *Rouch* v. *Hall*, *supra*, note (*b*), it was held that where milk was sent up to London by train, a railway porter at the terminus at which the milk arrived was not the agent of the seller for the purpose of receiving this notification.

(*e*) **Notification must be given and analysis made.**—The notification must be given and an analysis actually made, even if the fact of adulteration is admitted, at the time of the sale. In *Smart* v. *Watts*, [1895] 1 Q. B. 219 ; 64 L. J. M. C. 89 ; 71 L. T. 768 ; 43 W. R. 379 ; 18 Cox C. C. 62 ; 59 J. P. 54, an inspector bought some butter at a shop. Immediately after the sale the manager of the shop admitted that the butter was in fact margarine. In consequence of this admission the inspector did not notify to him that the article was purchased for analysis, nor did he procure an analysis to be made. The High Court, Wills and Wright, JJ., held that the notification ought to have been given and the analysis made, notwithstanding the admission, and quashed the conviction. But this would apparently not be so in the case of a purchase by a private individual. See note (*a*) to s. 20, *post*, p. 61.

(*f*) **Words repealed.**—The words in italics and enclosed in square brackets are repealed by s. 13 of the Act of 1899, and therefore the case of *Chapell* v. *Emson* (1883), 48 J. P. 200, in which the words "offer to" were interpreted, is now useless as an authority.

(*g*) **Three parts.**—Where a sample is taken under s. 2 of the Act of 1899, by an officer of the Local Government Board or the Board of Agriculture, the sample has to be divided into four parts (s. 2 (1) (*a*) of the Act of 1899), one of which parts is sent to the Board.

(*h*) **Separation of sample.**—The separation must be made from one undivided sample. Thus, in *Mason* v. *Cowdary*,

[1900] 2 Q. B. 419 ; 69 L. J. Q. B. 667 ; 82 L. T. 802 ; 49 W. R. 28 ; 64 J. P. 662 ; 19 Cox C. C 536, an inspector bought six bottles of camphorated oil and divided them into three lots of two bottles each, putting each lot into a separate bag and sealing them. He gave one lot to the seller, sent one lot for analysis, and kept the third lot. He did not open the bottles or mix or divide their contents. DARLING and BIGHAM, JJ., held that he had not satisfied the requirements of the section.

(*i*) **Procuring samples by agent or deputy.**—An officer purchasing for analysis may employ an agent or deputy to procure samples for him, and such agent or deputy need not himself deliver the sample to the analyst, but may hand it to a third person for the purpose of such delivery. See the cases set out in note (*c*) to s. 13, *ante*, p. 45.

(*k*) **Production of part retained.**—The part retained by the purchaser must be produced at the hearing (see s. 21, *post*, p. 62). Failure to do so may be fatal to a conviction (see *Hutchison* v. *Stevenson*, *post*, p. 65).

15. *Provision when sample is not divided.*—[*If the seller or his agent do not accept the offer of the purchaser to divide the article purchased in his presence, the analyst receiving the article for analysis shall divide the same into two parts, and shall seal or fasten up one of those parts and shall cause it to be delivered, either upon receipt of the sample or when he supplies his certificate, to the purchaser, who shall retain the same for production in case proceedings shall afterwards be taken in the matter.*]

This section is repealed by s. 27 of the Act of 1899.

16. *Provision for sending article to the analyst through the post office.*—If the analyst do not reside within two miles of the residence of the person

requiring the article to be analysed, such article may (*a*) be forwarded to the analyst through the post office as a [*registered letter*] (*b*) subject to any regulations (*c*) which the Postmaster-General may make in reference to the carrying and delivery of such article ; and the charge for the postage of such article shall be deemed one of the charges of this Act or of the prosecution, as the case may be.

(*a*) **"May."**—The word is not "must" or "shall," and, therefore, other means of conveyance may be used. The advantage of using the registered post, and thereby obtaining proof positive of the transmission of the sample, is, however, obvious.

(*b*) **"Registered letter."**—The words "registered parcel" are now substituted by s. 15 of the Act of 1899.

(*c*) **Regulations of Postmaster-General.**—The following extracts from the Post Office Guide should be noted :—

Page 27. Glass, liquids, grease, colouring powders, may be sent by post under the following conditions :—

1. Nothing inflammable, corrosive, or explosive, may be sent, nor anything having an odour so strong as to affect the contents of other packets in the mails. . . .

3. The following regulations as to packing must be complied with :—

Glass must be securely packed (in boxes of metal, wood, leather or cardboard) in such a way as to prevent all risk of injury to the mails or the officers of the post office.

Liquids must be enclosed in glass bottles, firmly sealed ; the bottles must be enclosed in a box of wood, leather or metal, and packed securely in the box by means of corrugated paper or other suitable material, a sufficient quantity of sawdust or some spongy substance being added to absorb all the liquid contents in case of the bottle being broken. Special attention must be paid to the packing round the shoulders of the bottle ;

and the box must open at one end only, and have a tightly-fitting lid, or a screw lid if made of metal, and if made of wood, a screw lid with india-rubber washer round the neck.

Semi-liquids and greases must have an inner covering securely closed, and an outer covering of metal, wood, or leather, sufficiently strong to prevent any risk of the contents escaping during transit.

Powders must have an inner covering securely closed, and a strong outer covering of metal, wood, leather or cardboard. . . .

5. Packets of the classes named which are found to be insecurely packed will be stopped. The public are warned that such insecurely packed packets come within the category of articles "likely to injure other postal packets in course of conveyance, or an officer of the post office." Such articles are prohibited from being sent by post, and the senders thereof are liable to penalties under the Post Office (Protection) Act, 1884. These provisions will apply to insecurely packed packets of glass, liquids, grease, and colouring powders.

Deleterious liquids or substances. — Deleterious liquids or substances, though otherwise prohibited from transmission by post, may be sent for medical examination or analysis by registered letter post, under the following conditions :—

Any such liquid or substance must be enclosed in a receptacle hermetically sealed, which receptacle must itself be placed in a strong wooden, leathern, or metal case, in such a way that it cannot shift about, and with a sufficient quantity of some absorbent material (such as sawdust or cotton wool) so packed about the receptacle as absolutely to prevent any possible leakage from the packet in the event of damage to the receptacle.

The packet so made up must be marked "fragile, with care," and tendered at a post office for transmission by registered letter post. It must on no account be dropped into a letter box, or sent by parcel post. These regulations will be rigidly enforced. Any postal packet of the kind found in the parcel post, or any postal packet of the kind, whether registered or not, found in the letter post not packed as directed, will be at

once stopped and destroyed with all its wrappings and enclosures.

Any person who sends by post a liquid or substance for medical examination or analysis, otherwise than as provided by these regulations, is liable to prosecution, even if he be a patient sending something to his medical adviser for his opinion, or a medical practitioner sending something to a laboratory or elsewhere.

17. *Person refusing to sell any article to any officer liable to penalty.*—If any such officer, inspector, or constable as above described, shall apply to purchase (*a*) any article of food or any drug exposed for sale (*b*), or on sale by retail (*c*) on any premises or in any shop or stores (*d*), and shall tender (*e*) the price for the quantity (*f*) which he shall require for the purpose of analysis, not being more than shall be reasonably requisite, and the person exposing the same for sale shall refuse to sell (*g*) the same to such officer, inspector, or constable, such person shall be liable to a penalty (*h*) not exceeding ten pounds.

Who may take proceedings.—In *Connor* v. *Butler*, [1902] 2 I. R. 569, *post*, p. 117, the King's Bench Division in Ireland held that any person, even a common informer, may take proceedings under this section.

(*a*) **Purchase by official.**—It has been held that the provisions of s. 14 of this Act do not apply to this section. See note (*a*) to s. 14, *ante*. Note also that the offer to purchase must be made by an official, and not by a private person.

(*b*) **Demand of inspector for particular supply.**—The question how far an inspector is entitled, when purchasing a sample for analysis, to demand to be supplied out of a particular receptacle in the shop is discussed, and decided up to a

certain point, in *Payne* v. *Hack* (1894), 58 J. P. 165. In that case an inspector in plain clothes was supplied by a publican with rum out of a bottle which stood on a shelf in the bar. After tasting it, the inspector asked for half-a-pint of rum. The publican thereupon was about to supply it out of another vessel, but the inspector demanded to be supplied out of the same bottle, saying that he was an inspector, and that it was for analysis. The publican refused, was summoned under this section, and convicted. The conviction was confirmed by the High Court upon a case being stated, and it was held that the publican was bound to supply the sample out of the same bottle as that from which he had originally served the inspector. The reason for this is stated by Bruce, J. "The inspector," he said, "demanded to be supplied with a sample taken out of the same bottle. I think he was entitled to this; for, if he were not so, nothing would be easier than for the seller to keep two vessels, and supply purchasers out of one when the article was intended for consumption, and supply out of the other when the article was intended for analysis. Without, therefore, going so far as to say that an inspector is entitled to go into a shop and demand to have a sample out of any vessel he likes, I think that as he had already been supplied out of a particular bottle, he was entitled to have the sample taken from that bottle. See also *Farley* v. *Higginbotham* in note (*g*), *infra*.

Another point that was discussed in *Payne* v. *Hack* was the question how far an inspector is bound to show his authority. In the present instance the publican had not demanded to see his authority, and it was held that, this being so, the inspector was not bound to produce it. But Kennedy, J., added: "I am inclined to think that if the inspector has no badge or other mark to denote his authority" (he was in plain clothes in this case), "and is unknown to the seller, and the seller demands his authority before selling the article, it would be requisite for the purchaser to show that authority before the seller could be treated under the statute as refusing to sell." The case of *Hale* v. *Cole*, 55 J. P. 376, also deals with the question of a constable's authority. It was decided under a different section

(s. 13, *q.v.*), and the facts were dissimilar to those in *Payne* v. *Hack*, but the two cases may well be compared.

(*c*) **Application of section to wholesale dealers.**—This section has been held to apply to wholesale dealers. In the Irish case of *McHugh* v. *McGrath*, [1894] 2 I. R. 71 ; 27 Ir. L. T. 102, a farmer was selling butter wholesale at a butter market. An inspector asked him for a pound of butter for analysis, but he refused to serve him. It was proved that the custom of the market was to sell butter by the firkin and that the sellers invariably refused to break bulk, but the Queen's Bench Division in Ireland held that s. 17 applies to wholesale as well as retail sales, and that the farmer ought to be convicted.

(*d*) **"Shop or stores."**—This provision must be read in connection with s. 5 of the amending Act, 1879, *post*, which extends it to articles sold in any street or open place of public resort.

(*e*) **"Shall tender."**—The money must be actually produced and offered. The mere proposal to purchase would not amount to a legal tender.

(*f*) **Quantity.**—By s. 18 of the Act of 1899 (*q.v.*) where the article is exposed for sale in an unopened tin or packet duly labelled, the vendor need not sell it except in such unopened tin or packet.

(*g*) **Refusal to sell.**—In *Farley* v. *Higginbotham*, [1898] 42 Sol. J. 309, a policeman under the orders of an inspector asked the servant of a shopkeeper for coffee, and was supplied. On being told that it was for analysis the servant seized the coffee and upset it on the floor. The policeman asked for some more coffee out of the same tin and was refused, the shopkeeper saying that the servant had orders only to sell that coffee as coffee and chicory. Wright and Darling, JJ., held that there had been a refusal to sell, and that the shopkeeper was liable for the act of his servant.

It is not larceny if the seller repossesses himself of the sample and offers to return the money. Thus in *Hewson* v. *Gamble*

(1892), 56 J. P. 534, an inspector bought a sample of coffee and paid for it. When the seller heard that it was bought for analysis he snatched it out of the inspector's hand and said that it was not sold as pure coffee, pointing to a label on the tin, and offered to return the money. Upon these facts HAWKINS and WILLS, JJ., held that there was no evidence of felonious intent. But the seller would now be liable to a penalty under s. 16 of the Act of 1899 for obstructing the inspector in the course of his duty.

(*h*) **Penalty.**—This cannot be increased upon a second conviction. See s. 17 of the Act of 1899.

The penalties inflicted by some petty sessional courts are quite inadequate. See circular letter from the Home Office to Clerks to Justices, dated July 24th, 1902, in the Appendix, *post*, p. 171.

18. *Form of the certificate.*—The certificate of the analysis (*a*) shall be in the form set forth in the schedule hereto, or to the like effect (*b*).

(*a*) **Certificate.**—For the sufficiency of the certificate as evidence of the facts stated in it, see s. 21 of this Act, and s. 22 of the Act of 1899, *post*, pp. 62, 140.

(*b*) **Form of certificate.**—See p. 87, *post*, and the cases collected in the notes to the Schedule.

19. *Quarterly report of the analyst.*—Every analyst appointed under any Act hereby repealed or this Act shall report (*a*) quarterly to the authority appointing him the number of articles analysed by him under this Act during the foregoing quarter, and shall specify the result of each analysis and the sum paid to him in respect thereof; and such report shall be presented at the next meeting of the authority appointing such analyst, and every such authority shall annually trans-

mit to the Local Government Board, at such time and in such form as the Board shall direct, a certified copy of such quarterly report.

(*a*) For form of analyst's report to be sent to Local Government Board, see Appendix, *post*, p. 160, and for observations thereon see letter from the Local Government Board, dated January 1st, 1879, Appendix, *post*, p. 161.

Proceedings against Offenders.

20. *Proceedings against offenders.* — When the analyst, having analysed any article, shall have given his certificate (*a*) of the result, from which it may appear that an offence against some one of the provisions of this Act has been committed, the person causing the analysis to be made (*b*) may take proceedings (*c*) for the recovery of the penalty herein imposed for such offence, before any justices in petty sessions assembled having jurisdiction in the place (*d*) where the article or drug sold was actually delivered to the purchaser, in a summary manner.

Every penalty imposed by this Act shall be recovered in England in the manner prescribed by the eleventh and twelfth of Victoria, chapter forty-three (*e*). In Ireland such penalties and proceedings shall be recoverable, and may be taken with respect to the police district of Dublin metropolis, subject and according to the provisions of any Act regulating the powers and duties of justices of the peace for such district, or of the police of such district; and with respect to other parts of Ireland, before a justice or justices of the peace sitting in petty sessions, subject and according to the

provisions of the Petty Sessions (Ireland) Act, 1851, and any Act amending the same.

Every penalty herein imposed may be reduced or mitigated according to the judgment of the justices.

(*a*) **Certificate of analyst.**—It seems now to have been clearly settled that the certificate of an analyst is a condition precedent to a public prosecution ; see *Peart* v. *Barstow* (1880), 44 J. P. 699, *post*, p. 88, and *Smart* v. *Watts*, *ante*, p. 52. These cases have been referred to with approval by HAWKINS, J., in *R.* v. *Smith*, *infra*, note (*b*). On the other hand, in the case of a private prosecution, it would appear that the certificate is not a condition precedent, for the judgment of Lord RUSSELL OF KILLOWEN, C.J., POLLOCK, B., and WRIGHT, J., in *Buckler* v. *Wilson*, *ante*, pp. 43, 48, in which the prosecutor was a private individual, contains the following passage : " The effect of s. 21 is merely to make the production of a certificate of analysis under s. 14 of itself sufficient evidence of the facts therein stated. There is nothing in the Act to prevent the proof of an offence by other satisfactory evidence ; nor is it necessary that the purchaser should obtain the certificate of the ' public analyst ' except where he purchases ' with an intention ' of submitting to analysis."

(*b*) **Person causing analysis to be made.**—The local inspector may take proceedings under this section, even though the person who actually caused the analysis to be made was an officer of a Government Department acting under the powers conferred by s. 2 of the Act of 1899 (*Connor* v. *Butler*, [1902] 2 I. R. 569, *post*, p. 117).

(*c*) **Proceedings against limited company.** — In taking proceedings against a limited company the summons must be served at the registered office of the company as provided by s. 62 of the Companies Act, 1862 (25 & 26 Vict. c. 89), irrespective of the place where the article was purchased (*Pearks, Gunston and Tee, Limited* v. *Richardson*, [1902] 1 K. B. 91 ; 50 W. R. 286 ; 66 J. P. 119).

(*d*) **Where prosecution may be instituted.**—By s. 20 (5) of the Act of 1899, a prosecution for giving a false warranty may be instituted before the court, either of the place where the warranty was given, or of the place where the article was purchased, thus overruling a contrary decision given in *R.* v. *Smith*, [1896] 1 Q. B. 596; 65 L. J. M. C. 104; 74 L. T. 348; 44 W. R. 492; 60 J. P. 372; 18 Cox C. C. 307, *post*, p. 63.

(*e*) **Penalty, how recovered.**—See the Summary Jurisdiction Act, 1848 (Jervis's Act). See also s. 19 of the Act of 1899, *post*, p. 130.

21. *Certificate of analyst primâ facie evidence* (*a*). *Defendant and his wife may be examined.*—At the hearing of the information in such proceeding (*b*) the production of the certificate of the analyst shall be sufficient evidence (*c*) of the facts therein stated, unless the defendant shall require that the analyst shall be called as a witness (*d*), and the parts of the articles retained by the person who purchased the article shall be produced (*e*); and the defendant may, if he think fit, tender himself and his wife to be examined on his behalf, and he or she shall, if he so desire, be examined accordingly.

(*a*) **Certificate also evidence for defence.**—Section 22 of the Act of 1899 (*q.v.*) contains similar provisions for the production by the defendant of a certificate of analysis. Note also the provisions of s. 19 of the Act of 1899 with regard to any certificate obtained by the prosecutor, *post*, p. 131.

(*b*) **"Such proceeding."**—In *R.* v. *Smith*, *infra*, Hawkins, J., seems to have held that this section applies only to proceedings under s. 20. If this is so, it would seem to follow that it does not apply to proceedings where the article was not bought for analysis; see *Buckler* v. *Wilson*, *ante*, pp. 43, 48.

This view, however, has apparently never been acted upon, and the *dictum* of HAWKINS, J., was not necessary for the actual decision of the case.

Apparently, the proceeding contemplated is the prosecution of the person from whom the sample was obtained, and not of the wholesale dealer from whom the retail seller obtained the article. Thus, in *Tyler* v. *Kingham & Son, Limited*, [1900] 2 Q. B. 413 ; 69 L. J. Q. B. 630 ; 83 L. T. 169 ; 64 J. P. 598 ; 19 Cox C. C. 547, a grocer, who was prosecuted for selling margarine as butter, produced a warranty from the wholesale dealer and was discharged. Proceedings were then taken against the wholesale dealer. At the trial the analyst's certificate, obtained for the purposes of the original prosecution, was offered as evidence that the article sold was really margarine. RIDLEY and BIGHAM, JJ., held that the certificate was not evidence against the wholesale dealer.

The same point appears to have been raised in *R.* v. *Smith*, [1896] 1 Q. B. 596 ; 65 L. J. M. C. 104 ; 74 L. T. 348 ; 44 W. R. 492 ; 60 J. P. 372 ; 18 Cox C. C. 307. The facts of the case were that Kerr, a farmer at Oakham, sold milk with a warranty to a dairy company at Finchley, who, in their turn, sold it to C., the consumer at Islington, where a sample was taken in course of delivery, and was found to be adulterated. The company were prosecuted at the Clerkenwell Police Court, and, having proved that they bought the milk with a warranty and sold it in the same state as they bought it, etc., were acquitted. A prosecution was thereupon instituted, also at Clerkenwell, against Kerr under s. 27 of the Act of 1875 for giving a false warranty. In the course of his judgment, HAWKINS, J., said : "The warranty was made at Oakham, the delivery by Kerr to the dairy company at Finchley. There was no sample of the milk taken by any inspector in the course of its delivery to the dairy company, and therefore there could be no 'such' sample to analyse, and, even had there been, no analysis was made by any analyst appointed for the district of Finchley, and the analysis of a sample taken after the milk had been actually delivered to, and received by, the dairy company

in a district where Kerr never had any control over the milk, and of which he had no knowledge, could not affect him, and the certificate given as the result of the analysis of 'such' a sample could not, in our opinion, be any evidence as against Kerr." This appears to mean, that even if the proceedings had been rightly instituted as regards place, nevertheless the certificate of the Clerkenwell analyst would have been no evidence against Kerr. *Tyler* v. *Kingham*, *supra*, is apparently a decision to the same effect, and if this is so, the result is that this section does not apply to proceedings for giving a false warranty, and that therefore in such proceedings the analyst must be called and give oral evidence. See also note (*h*) to s. 20 of the Act of 1899, *post*, p. 139.

(*c*) **Certificate, whether conclusive.** — In *Harrison* v. *Richards* (1881), 45 J. P. 552, a milkman had been summoned for selling milk not of the nature, substance, or quality of the article demanded. The analyst's certificate was produced, but the defendant did not tender any evidence at the hearing, nor was the analyst examined. The magistrate dismissed the case on the ground that he was not satisfied that the milk had been adulterated, and thus refused to convict on the analyst's certificate, although no evidence was tendered against it. On appeal, the High Court held that as there was no evidence to contradict the certificate of the analyst, the magistrate ought to have acted on it, and convicted the defendant.

The opposite view appears at first sight to have been taken in the Scotch case of *Macleod* v. *O'Neil* (1882), 9 Rettie (J.C.), 32, but a careful consideration of the judgment in that case leads to the conclusion that the true ground of the decision was that the certificate of the analyst was not a proper one, and that, therefore, the sheriff was entitled to disregard it as he did. See also the cases quoted in note (*c*) to s. 22, *infra*, p. 66.

On the other hand, the analyst's certificate is not conclusive evidence of the facts as therein stated if there is evidence to meet it on the other side. In *Hewitt* v. *Taylor*, [1896] 1 Q. B. 287; 65 L. J. M. C. 68; 74 L. T. 51; 44 W. R. 431; 18 Cox, C. C. 226; 60 J. P. 311—a milk prosecution under

s. 6 of this Act—the analyst's certificate, after setting out the constituent parts of the sample, stated that in the analyst's opinion the milk had been watered. The seller did not require the analyst to be called, but tendered himself as a witness, and gave evidence to show that the milk had not been watered. The justices, considering the whole of the facts before them, dismissed the information, and the contention before the High Court was that, the analyst not having been required to be called, the certificate was conclusive, and could not be rebutted by the evidence of the defendant. But the court declined to adopt this view, and held that the magistrates were right in deciding the case upon the whole of the evidence before them. Similar decisions have been given in Scotland in *Fyfe* v. *Hamilton* and *Todd* v. *Cochrane*, *infra*, p. 66.

(*d*) **Oral evidence of analyst.**—It is at least doubtful whether the analyst can by his oral evidence supplement a deficiency in the written certificate. See *Hudson* v. *Bridge*, *post*, p. 88, in the notes to the Schedule.

(*e*) **Production of third sample.**—Failure to produce the third sample may be fatal to a conviction. In the Scotch case of *Hutchison* v. *Stevenson* (1902), 4 Fraser (J.C.), 69 ; 3 Adam, 651 ; 39 Sc. L. R. 789, at the hearing of the prosecution the defendant called for the production of the third sample in order that it might be submitted to the Government analyst. The prosecutor failed to produce it, the bottle containing it having been accidentally broken. The Court of Justiciary held that the failure to produce the sample was fatal to a conviction.

22. *Power to justices to have articles of food and drug analysed.*—The justices before whom any complaint may be made, or the court before whom any appeal may be heard, under this Act may (*a*), upon the request of either party, in their discretion cause any article of food or drug to be sent to the Commissioners of Inland Revenue, who shall thereupon direct the chemical officers of their department at

Somerset House (*b*) to make the analysis, and give a certificate (*c*) to such justices of the result of the analysis; and the expense of such analysis shall be paid by the complainant or the defendant as the justices may by order direct.

(*a*) **Who may require sample to be sent.**—The provisions of this section are amplified by s. 21 of the Act of 1899 (p. 139), which gives to either party the right to require the sample to be sent to the Government laboratory; and the justices may so send it without any previous request.

(*b*) **Government laboratory.**—The Government laboratory has now been removed from Somerset House to Clement's Inn Passage, Strand, W.C., and its officers are now styled "Government analysts."

(*c*) **Certificate, whether conclusive.**—The Act does not make the certificate conclusive, although, as a matter of practice, it naturally carries very great weight. In *Dargie* v. *Dunbar* (1884), 11 Rettie (J.C.), 37, the majority of the Court of Justiciary in Scotland appear to have held that the opinion of the Somerset House analysts (expressed in a certificate) was inadmissible as evidence of the percentage of fat which milk from a Scotch cow ought to contain, but this view would certainly not be followed by an English court (see cases cited in note (*c*) to s. 21, *ante*, p. 64).

It has been decided in Scotland that the Somerset House certificate is not conclusive if there is substantial evidence on the other side. In *Fyfe* v. *Hamilton* (1894), 1 Adam, 484, which was a milk prosecution, the district analyst certified an abstraction of 15 per cent. of fat, but another analyst, on behalf of the defendant, certified that there had been no abstraction. The Somerset House analyst certified an abstraction of 26 per cent. The sheriff substitute acquitted the defendant, and the Court of Justiciary held that he was not bound to convict. A similar decision upon practically identical facts was given by the same court in *Todd* v. *Cochrane* (1901), 3 Adam, 357; 38 Sc. L. R. 801. It is probable that the King's Bench Division would take the same view.

23. *Appeal to Quarter Sessions.*—Any person who has been convicted of any offence punishable by any Act hereby repealed or by this Act by any justices may appeal in England to the next general or quarter sessions of the peace [*which shall be held for the city, county, town, or place wherein such conviction shall have been made, provided that such person enter into a recognisance within three days next after such conviction, with two sufficient sureties, conditioned to try such appeal, and to be forthcoming to abide the judgment and determination of the court at such general or quarter sessions, and to pay such costs as shall be by such court awarded; and the justices before whom such conviction shall be had are hereby empowered and required to take such recognisance; and the court at such general or quarter sessions are hereby required to hear and determine the matter of such appeal, and may award such costs to the party appealing or appealed against as they or he shall think proper*] (*a*).

In Ireland any person who has been convicted of any offence punishable by this Act may appeal to the next court of quarter sessions to be held in the same division of the county where the conviction shall be made by any justice or justices in any petty sessions district or to the recorder at his next sessions where the conviction shall be made by the divisional justices in the police district of Dublin metropolis, or to the recorder of any corporate or borough town when the conviction shall be made by any justice or justices in such corporate or borough town (unless when any such sessions shall commence within ten days from the date of any such conviction, in which case, if the appellant sees fit, the appeal may be made to the

next succeeding sessions to be held for such division or town), and it shall be lawful for such court of quarter sessions or recorder (as the case may be) to decide such appeal, if made in such form and manner, and with such notices as are required by the said Petty Sessions Acts respectively herein-before mentioned as to appeals against orders made by justices at petty sessions, and all the provisions of the said Petty Sessions Acts respectively as to making appeals and as to executing the orders made on appeal, or the original orders where the appeals shall not be duly prosecuted, shall also apply to any appeal made under this Act.

(*a*) **Repeal.**—The words in italics enclosed in square brackets are repealed by 47 & 48 Vict. c. 43, s. 4 (Summary Jurisdiction Act, 1884).

24. *Proof by defendant of exception or provision.*—In any prosecution under this Act, where the fact of an article having been sold in a mixed state has been proved, if the defendant shall desire to rely upon any exception or provision contained in this Act (*a*), it shall be incumbent upon him to prove the same.

(*a*) See ss. 5, 6, 8, 25 of this Act; s. 6 of the Act of 1879: and s. 20 of the Act of 1899.

25. *Defendant to be discharged if he prove that he bought the article in the same state as sold, and with a warranty* (*a*).—If the defendant in any prosecution under this Act (*b*) prove to the satisfaction of the justices or court that he had purchased the article in question as the same in nature, substance, and quality as that demanded of him by the prosecutor, and with a written warranty (*c*) to that effect, that he had no

reason to believe at the time when he sold it that the article was otherwise, and that he sold it in the same state as when he purchased it (*d*), he shall be discharged from the prosecution, but shall be liable to pay the costs incurred by the prosecutor, unless he shall have given due notice to him that he will rely on the above defence (*e*).

(*a*) **Further provisions.**—This section must be read in conjunction with s. 26 of the Act of 1899, *post*, p. 135, which contains further provisions as to the use of a warranty as a defence.

(*b*) **Offences to which this section relates.**—From the actual wording of the section, it would appear, at first sight, as though the warranty defence ought to be available in any prosecution under this Act. This, however, is clearly not so. For instance, no warranty could possibly be a defence to a prosecution for refusing to sell to an inspector; and in *Elliott* v. *Pilcher*, [1901] 2 K. B. 817; 70 L. J. K. B. 795; 85 L. T. 50; 65 J. P. 743; 20 Cox C. C. 18, Bigham, J., said that he did not think that the defence applied to offences under ss. 3, 4, and 9. It is suggested that the test may be to see whether the wording of the section will fit the circumstances of the particular offence, or, in other words, whether there has been a sale to the prosecutor following upon a demand by him for an article of a particular nature, substance, and quality; if these essentials are not present, the wording of the section does not apply to the case. For instance, it is submitted that the warranty defence would be inapplicable to a prosecution under the first part of s. 9 for "abstracting from an article of food any part of it," because the offence is not the sale, but the abstraction; but that it might be applicable to a prosecution under the latter part of the section for "selling the article so altered."

There is no difficulty with regard to offences created by the Act of 1879, or by the Margarine Act, for the Act of 1879 only creates one new offence (s. 4) to which no warranty could possibly apply, while the Margarine Act has a warranty section

of its own (s. 7). The case of the Act of 1899, however, is not so simple. The warranty section in terms applies only to offences under the Act of 1875, but at the end of s. 25 of the Act of 1899, there are the words : "An offence under this Act shall be treated as an offence under the Sale of Food and Drugs Acts." It is not easy to see what the exact effect of these words is ; but it is suggested that they have the effect of applying the warranty defence to offences under the later Act, at any rate to so many of them as comply with the test above referred to.

(*c*) **"Written warranty."**—The question whether a particular document amounts to a "written warranty" within the meaning of this section has arisen in a number of cases. It will be noticed that in the earlier decisions a very narrow interpretation was given to the words, but that a wider view has prevailed in the more modern cases. The following rules of law with regard to warranties must be borne in mind : (1) Where goods are sold by description, the buyer is entitled to treat that description as a warranty that the goods are of the quality described (see Sale of Goods Act, 1893 (57 & 58 Vict. c. 71), ss. 11 (1) and 13) ; (2) A warranty given after the contract of sale has been completed is generally void, for there is no consideration to support it. See *Roscorla* v. *Thomas* (1842), 3 Q. B. 234 ; 11 L. J. Q. B. 214.

In *Rook* v. *Hopley* (1878), L. R. 3 Ex. D. 209 : 47 L. J. M. C. 118 ; 38 L. T. 649 ; 26 W. R. 663 ; 42 J. P. 551, which was a prosecution for selling lard containing upwards of 15 per cent. of water, the defendant proved that he sold the article in the same condition as it was when he bought it, and that when he purchased it he received an invoice in which it was described as "lard." The court held that the invoice was not a written warranty within s. 25, so as to discharge the defendant, and Kelly, C.B., said : "I cannot hold that this invoice contains anything more than a description which cannot be deemed to be a warranty" ; while Pollock, B., added : "What is required by the statute is a writing expressing on the face of it that it is a warranty." It is submitted that in view of the more recent decisions these *dicta* would hardly hold good nowadays (see

Laidlaw v. *Wilson*, *Hawkins* v. *Williams*, and *Bacon* v. *Callow Park Dairy Company*, *infra*), from which it would appear that the invoice would now be treated as a warranty that the article sold was "lard." But it is not quite clear whether such a limited warranty would constitute a defence.

In *Harris* v. *May* (1883),12 Q. B. D. 97 ; 53 L. J. M. C. 39 ; 48 J. P. 261, the appellant purchased milk under a written contract made with the farmer who supplied it, and who agreed to sell "new and pure milk each and every day for six months." The court held that this contract was not sufficient to protect him. Lord COLERIDGE, C.J., said : "It seems clear that the Legislature meant that a person seeking to protect himself against the penalty, and wishing to make himself perfectly safe in respect of the sale of a specific article, must show that he had a proper specific warranty in writing in respect of the article from the vendor. The appellant has not shown that. It is possible that he may have had a parol statement, amounting to a warranty, from his vendor each morning that the milk was supplied, but that would not be sufficient." His lordship also said : "I am of opinion that the contract relied on by the appellant is not a written warranty within the meaning of the Act." This case was discussed in *Laidlaw* v. *Wilson*, deliberately not followed in *Elliott* v. *Pilcher*, and definitely dissented from by Lord ALVERSTONE, C.J., and DARLING and CHANNELL, JJ., in *Bacon* v. *Callow Park Dairy Co.*, *infra*.

In *Farmers'*, *etc. Dairy Co.* v. *Stevenson* (1890), 60 L. J. M. C. 70 ; 63 L. T. 776 ; 55 J. P. 407 ; 17 Cox C. C. 201, which was a prosecution for selling milk from which cream had been abstracted, there was a written contract containing the words : "The vendor hereby warrants each and every supply of milk . . . to be pure, genuine and new milk, unadulterated and with all its cream on," and on each of the cans delivered there was a printed label with the words "warranted genuine new milk with all its cream on," and the magistrates found as a fact that the milk in the can was delivered in pursuance of the contract. The High Court held that the seller had a good defence under s. 25, and STEPHEN, J., said : "In the agree-

ment there was a written warranty that the milk to be delivered was to be pure, genuine, and new milk . . . and the fact that the milk was not to be delivered all at one time does not to my mind make any difference." See *Iorns* v. *Van Tromp*, *infra*, where this case is fully discussed by CAVE, J., in his judgment.

The case of *Hotchin* v. *Hindmarsh*, [1891] 2 Q. B. 181 ; 60 L. J. M. C. 146 ; 65 L. T. 149 ; 39 W. R. 607 ; 57 J. P. 775, appears, at first sight, to conflict with *Farmers', etc. Dairy Co.* v. *Stevenson*, but in *Hotchin* v. *Hindmarsh* the question of warranty was only incidentally referred to, and the true ground of the decision was that there was no evidence to show that the seller sold the article in question in the same state as when he purchased it or that he had no reason to believe that it had undergone any change. See note (*c*), *infra*.

In *Elder* v. *Smithson* (1893), 57 J. P. 809, the respondent had sold lard which was adulterated with four per cent. of beef fat. His defence was that he had bought the lard from a wholesale merchant and that it was contained in a bladder on which was printed legibly "warranted pure star brand." The court (WILLS and WRIGHT, JJ.) held that the words on the bladder did not constitute a warranty.

In *Laidlaw* v. *Wilson*, [1894] 1 Q. B. 74 ; 63 L. J. M. C. 37 ; 42 W. R. 78, a grocer bought lard from a manufacturer under the following contract : "We have this day sold to you three tons Kilvert's pure lard for delivery to end of January." Two barrels of lard were forwarded under the above contract accompanied by an invoice in which they were described as "Kilvert's pure bladdered lard." A portion of this lard was sold to a customer, and turned out to be adulterated. The court held that the grocer was protected by the contract, and CHARLES, J., said : "The respondent contends that the contract contained a written warranty that the lard should be pure. It is true that the contract does not in terms say that the purity of the lard is warranted, but, in my judgment, it is not necessary that the word 'warranted' should be actually used. To my mind it is enough if the language of the document imports a warranty, and shows an intention on the part

of the vendor to warrant. It was, however, said on the part of the appellant that there were two cases which were opposed to that view. The first was *Rook* v. *Hopley* [*supra*]. But that case is distinguishable on two grounds. In the first place, the statement there was that the thing sold was lard simply ; there was no statement of its purity. And secondly, the statement there, such as it was, was to be found in an invoice only. But the invoice was no part of the contract, and it is in the contract, and in the contract alone, that the warranty which the statute requires must be sought. I decide the present case upon the construction which is to be put, not upon the invoice of December 23rd, but on the contract of December 17th. The other case relied upon by the appellant was *Harris* v. *May* [*supra*], where it was held that a written contract made on March 24th, whereby one F. agreed to deliver to the defendant eighty-six gallons of pure milk every day for six months, did not constitute a written warranty in respect of a specific can of milk delivered by F. on April 12th. There, no doubt, Lord COLERIDGE, at the commencement of his judgment, said that in his opinion the contract relied on by the defendant was not a written warranty within the meaning of the Act. But on looking at his judgment as a whole, I think that what he really meant was that it was not such a warranty as would cover the specific delivery of milk on April 12th, in the absence of some written evidence that that specific delivery was made under the contract. In the present case there is evidence that the particular parcel of lard was delivered under the contract, the delivery having been accompanied by an invoice which describes the lard in the same terms as those contained in the contract. The invoice, however, is material, not as itself containing a warranty of purity, but as earmarking the particular parcel as having been delivered under a contract in which a written warranty of purity was contained." WRIGHT, J., said : "The word 'pure' in the contract of December 17th amounts to an agreement as an essential part of the contract that the lard supplied should be pure, and that is, in my opinion, a sufficient warranty of its purity within the meaning of the section."

The next case, *Lindsay* v. *Rook* (1894), 63 L. J. M. C. 231 ; 58 J. P. 735, is a very difficult one to understand. The facts, as stated in the special case, are that the defendant bought vinegar in a cask which had upon it a printed label bearing the words "Vinegar warranted unadulterated.—Grimble and Co., Limited, Cumberland Market, London," and the cask was delivered to her along with an invoice in which it was described as "Grimble's Vinegar." She afterwards sold it by retail in exactly the same state as she had received it from the manufacturers, and it proved to have been adulterated :—*Held*, that she was entitled to the protection afforded by s. 25. The judgments are very short, but it does appear that the court held that the label in itself constituted a sufficient warranty to satisfy the section. If this is so, it must be pointed out that this is the only case in which such a view was taken, and that it is wholly inconsistent with the elaborate judgments in the next case below.

In *Iorns* v. *Van Tromp* (1895), 64 L. J. M. C. 171 ; 72 L. T. 449 ; 18 Cox C. C. 132 ; 59 J. P. 246, a grocer sold ground ginger adulterated with 90 per cent. of exhausted or spent ginger. He had purchased it as "ground ginger" in canisters, and had no reason to believe it otherwise than genuine, either when he purchased or retailed it. He had received from his vendor an invoice in which it was described as "ground ginger," and each canister bore a printed label, "Warranted genuine pure ground ginger" :—*Held*, that neither invoice nor label, together or separately, constituted a written warranty, so as to entitle the grocer to the protection afforded by s. 25 ; and Cave, J., said : "*Laidlaw* v. *Wilson* [*supra*] was referred to in the argument as being in the appellant's favour, but when the judgments are read, it is plain that it governs the present case adversely to this contention. There there was a written contract for the delivery of pure lard, and it was held that if the document relied on amounted to a warranty, it was sufficient without the word 'warrant' or 'warranty' being expressly stated in the document. . . . Here there was no such written contract, and the justices have declined to look at the invoice as throwing light on the question of warranty, and they

were perfectly right. Of course, there are some cases in which an invoice or label may be regarded in this way, as in *Farmers'*, *etc. Dairy Co.* v. *Stevenson* [*supra*], . . . But there there was a contract warranting the delivery of pure milk for a fixed period . . . it was not the label which contained the warranty ; all it did was to identify the milk. When there is a written warranty in the first instance, then a label such as appears on these canisters of ginger may be regarded, but not otherwise." (But on this point compare *Bacon* v. *Callow Park Dairy Co.*, *infra*.) And WRIGHT, J., said : "There must be some express individual representation in writing from the seller to the retail dealer, forming part of the contract to sell. . . . The representation . . . must be an essential term in the bargain."

In *Harkins* v. *Williams* (1895), 59 J. P. 533, a grocer bought butter from a wholesale merchant. At the time of the sale an invoice was handed to him by the merchant, in which the butter was described as "butter guaranteed pure average quality," and initialed by him. The butter turned out to be adulterated. The justices held that the invoice constituted a sufficient warranty to satisfy the section, and the court held that their finding was justified. Lord RUSSELL OF KILLOWEN, C.J., said : "An invoice is often used as evidence of the sale itself. Therefore, I see no reason why it should not be evidence of a warranty at the time of sale. Here the natural conclusion from the fact that the invoice bears the date of the day of purchase, and contains the words 'guaranteed pure,' followed by initials, is that the vendor was giving that document as a written warranty in pursuance of a stipulation by the purchaser for that object." The point to be noted in this case is that the invoice was dated on the day of sale, and in fact contained the terms of the contract. In the course of the argument CHARLES, J., was careful to point out that in *Laidlaw* v. *Wilson* the invoice was dated five days after the purchase. The conclusion to be drawn from this case is that an invoice may constitute a sufficient warranty if it may be regarded as the actual contract of sale, but not otherwise.

In *Robertson* v. *Harris*, [1900] 2 Q. B. 117 ; 69 L. J. Q. B.

526 ; 82 L. T. 536 ; 48 W. R. 571 ; 64 J. P. 565 ; 19 Cox C. C. 495, a farmer entered into a written contract on January 20th, 1889, to sell to the defendant 1,000 gallons of milk weekly, "the milk to be pure new milk." On December 15th, 1899, one of the consignments of milk was found to be adulterated. There was nothing in writing to show that the warranty attached to this particular consignment. Ridley and Darling, JJ., held, following *Harris* v. *May*, *supra*, that the defendant was not protected by the warranty unless he could produce evidence in writing to show that the particular consignment was purchased under the warranty. See, however, the two next cases, *infra*.

In *Elliott* v. *Pilcher*, [1901] 2 K. B. 817 ; 70 L. J. K. B. 795 ; 85 L. T. 50 ; 65 J. P. 743 ; 20 Cox C. C. 18, the defendant in January, 1897, entered into a verbal contract with a firm of dairymen for a daily supply of milk. In July, 1899, the firm at the defendant's request gave him the following warranty in writing : "We hereby warrant that each and every supply of milk sent by us to you shall be new milk, unadulterated, and with all its cream." In July, 1900, a consignment of milk proved to be deficient in fat, but there was nothing in writing to show that the warranty applied to that particular consignment. Bigham and Ridley, JJ., held that the defendant was entitled to prove by oral evidence that the particular consignment was purchased under the warranty ; that it was not necessary to show on the face of the warranty that it applied to the particular milk sold, but that the connection between the two might be shown by evidence ; and that a specific warranty with each delivery of milk was not required. Bigham, J., considered that *Harris* v. *May* and *Laidlaw* v. *Wilson*, *supra*, were irreconcilable, and the court followed the latter case, and declined to follow *Harris* v. *May* and *Robertson* v. *Harris*.

In *Bacon* v. *Callow Park Dairy Co., Limited* (1902), 87 L. T. 70 ; 66 J. P. 804 ; 18 T. L. R. 573, the defendants entered into a verbal contract with a farmer for the purchase of a daily supply of milk, and for a written warranty to be given with each churn.

The churns were accordingly labelled "Warranted pure." One of the churns turned out to be adulterated. Lord ALVERSTONE, C.J., and DARLING and CHANNELL, JJ., held that the defendants were protected by the written warranty on the churn, and Lord ALVERSTONE, C.J., said that he doubted whether, having regard to the more recent cases, *Harris* v. *May* could be regarded as law. It should be observed that this case differs from *Elder* v. *Smithson* and *Iorns* v. *Van Tromp*, in which a label was held not to be a sufficient warranty in itself, inasmuch as here there was a contract to give a warranty by the label, and therefore there was a consideration for the warranty so given.

In *Wilson* v. *Playle* (1903), 67 J. P. 263, which was a prosecution for selling milk containing seven per cent. of added water, the defendant relied upon a document as containing a warranty. It was in these terms: "I, A. Playle, agree to buy, and Messrs. F. and P. agree to sell, but without accepting any responsibility after delivery, about fifty-four Imperial gallons of pure milk every day up to March 31st, 1903." The milk was found to be adulterated after it had been delivered. The magistrate was of opinion that the document was a valid warranty, and afforded a defence, notwithstanding the words of limitation contained in it, and Lord ALVERSTONE, C.J., and WILLS and CHANNELL, JJ., held that he was right.

It is suggested that in view of the above decisions, the points to be borne in mind in considering whether a particular document does or does not constitute a sufficient warranty to satisfy s. 25 are:

(1) Express words of warranty need not be used.

(2) The warranty must either (a) be given at the time of the sale, and form part of the actual contract of sale; or (b) if given after the sale, must be given in pursuance of a stipulation in the contract of sale to give a subsequent warranty.

(3) There must be clear evidence that the article in respect of which the defence is set up, was sold under the contract containing the warranty.

(*d*) **Warranty alone not sufficient.**—It should further be noted that it is not sufficient to prove a warranty. The seller must also prove that he "purchased the article as the same in nature, substance, and quality as that demanded of him by the prosecutor . . . and that he had no reason to believe at the time when he sold it that the article was otherwise, and that he sold it in the same state as when he purchased it." See *Hotchin* v. *Hindmarsh*, *supra*, and *Jones* v. *Bertram* (1894), 58 J. P. 116. In the latter case, the magistrates upon a defence under this section had found for the defendant and dismissed the summons, but had neglected to find whether the milk was in the same state as when he received it, or not, and the High Court sent the case back to them for their decision upon the point.

Hotchin v. *Hindmarsh* also decided that the section affords no protection to the servant or agent of a principal who has obtained a warranty, in cases where such servant or agent is prosecuted as seller. But this decision has now been set aside by s. 20 (4) of the Act of 1899, *post*, p. 136.

(*e*) **Notice of defence.**—The last sentence of the section, though not in terms repealed, is now inoperative, as further and more stringent provisions are substituted for it by s. 20 (1) of the Act of 1899, *post*, p. 135.

26. *Application of penalties.*—Every penalty imposed and recovered under this Act (*a*) shall be paid in the case of a prosecution by any officer, inspector, or constable of the authority who shall have appointed an analyst or agreed to the acting of an analyst within their district, to such officer, inspector, or constable, and shall be by him paid to the authority for whom he acts, and be applied towards the expenses of executing this Act, any statute to the contrary notwithstanding ; but in the case of any other prosecution the same shall be paid and applied in England according to the law

regulating the application of penalties for offences punishable in a summary manner, and in Ireland in the manner directed by the Fines Act, Ireland, 1851, and the Acts amending the same.

(*a*) **Extension to Margarine Act.**—The provisions of this section extend to the Margarine Act (see *R.* v. *Titterton*, [1895] 2 Q. B. 61 ; 64 L. J. M. C. 202 ; 73 L. T. 345 ; 43 W. R. 603 ; 59 J. P. 327 ; 18 Cox C. C. 181).

27. *Forging certificate or warranty ; wilful misapplication of warranty ; false warranty ; false label.*—Any person who shall forge, or shall utter, knowing it to be forged for the purposes of this Act, any certificate or any writing purporting to contain a warranty, shall be guilty of a misdemeanor and be punishable on conviction by imprisonment for a term of not exceeding two years with hard labour ;

Every person who shall wilfully apply to an article of food, or a drug, in any proceedings under this Act, a certificate or warranty given in relation to any other article or drug, shall be guilty of an offence under this Act, and be liable to a penalty (*a*) not exceeding twenty pounds ;

[*Every person who shall give a false warranty in writing to any purchaser in respect of an article of food or a drug sold by him as principal or agent, shall be guilty of an offence under this Act, and be liable to a penalty not exceeding twenty pounds ;*] (*b*)

And every person who shall wilfully give a label with any article sold by him which shall falsely describe the article sold, shall be guilty of an offence under this Act, and be liable to a penalty (*a*) not exceeding twenty pounds.

Guilty knowledge. — In *Derbyshire* v. *Houliston*, [1897] 1 Q. B. 772 ; 66 L. J. Q. B. 569 ; 76 L. T. 624 ; 45 W. R. 527 ; 61 J. P, 374, Hawkins, J., pointed out that in every prosecution under this section guilty knowledge must be proved. See further, however, note (*h*) to s. 20 of the Act of 1899, *post*, p. 139.

Certificate of analyst.—In *R.* v. *Smith*, [1896] 1 Q. B. 596 ; 65 L. J. M. C. 104 ; 74 L. T. 348 ; 44 W. R. 492 ; 60 J. P. 372 ; 18 Cox C.C. 307, Hawkins, J., seems to have thought that in prosecutions under this section the analyst's certificate could not be used as evidence and that the analyst himself must be called. See, however, the remarks upon this case in notes (*g*) and (*h*) to s. 20 of the Act of 1899, *post*, pp. 138, 139.

(*a*) **Penalty.**—By s. 17 of the Act of 1899 (*post*, p. 129), the penalty may be increased to £50 on a second, and to £100 on any subsequent, conviction. The defendant may also be imprisoned in certain circumstances.

The penalties inflicted by some petty sessional courts are quite inadequate. See circular letter from the Home Office to Clerks to Justices, dated July 24th, 1902, in the Appendix, *post*, p. 171.

(*b*) **Repeal.**—The words in italics and square brackets are repealed by s. 27 of the Act of 1899, and re-enacted with additions by sub-s. (6) of s. 20 of the same Act (*post*, p. 136).

The cases bearing on this repealed clause are noted under s. 20 of the later Act.

28. *Proceedings by indictment and contracts not to be affected.*—Nothing in this Act contained shall affect the power of proceeding by indictment, or take away any other remedy against any offender under this Act, or in any way interfere with contracts and bargains between individuals, and the rights and remedies belonging thereto.

Provided that in any action brought by any person for a breach of contract on the sale of any article of food or of any drug, such person may recover alone or in addition to any other damages recoverable by him the amount of any penalty in which he may have been convicted under this Act, together with the costs paid by him upon such conviction and those incurred by him in and about his defence thereto, if he prove that the article or drug the subject of such conviction was sold to him as and for an article or drug of the same nature, substance, and quality as that which was demanded of him, and that he purchased it not knowing it to be otherwise, and afterwards sold it in the same state in which he purchased it; the defendant in such action being nevertheless at liberty to prove that the conviction was wrongful, or that the amount of costs awarded or claimed was unreasonable.

Expenses of executing the Act.

29. *Expenses of executing Act.*—The expenses of executing this Act shall be borne, in the city of London and the liberties thereof, by the consolidated rates raised by the Commissioners of Sewers of the city of London and the liberties thereof, and in the rest of the metropolis by any rates or funds applicable to the purposes of the Act for the better local management of the metropolis (*a*), and otherwise as regards England, in counties by the county rate (*b*), and in boroughs by the borough fund or rate:

And as regards Ireland, in counties by the grand jury cess (*c*), and in boroughs by the borough fund or rate; all such expenses payable in any county out of

grand jury cess (*c*) shall be paid by the treasurer of such county ; and

The grand jury of any such county shall, at any assizes at which it is proved that any such expenses have been incurred or paid without previous application to presentment sessions, present to be raised off and paid by such county the moneys required to defray the same (*d*).

(*a*) The Metropolis Management Act, 1855.

(*b*) **Exceptions.**—Some quarter sessions boroughs which contribute to the general county rate are nevertheless exempt from contributing to the expenses of administering the Act in the county. See Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 152, and the note to s. 8 of the Act of 1879, *post*, p. 99.

(*c*) "**Grand Jury Cess.**"—Now the county fund. See Local Government (Ireland) Act, 1898 (61 & 62 Vict. c. 37), s. 47 (1).

(*d*) **Grand Jury.**—This provision is obsolete, the business of the grand jury having been transferred by s. 40 of the Act above referred to, to the county councils.

Special Provision as to Tea.

30. *Tea to be examined by the Customs on importation.*—[*From and after the first day of January, one thousand eight hundred and seventy-six*] (*a*) all tea imported as merchandise into and landed at any port in Great Britain or Ireland shall be subject to examination by persons to be appointed by the Commissioners of Customs, subject to the approval of the Treasury, for the inspection and analysis thereof, for which purpose samples may, when deemed necessary by such inspectors, be taken and with all convenient speed be examined by the analysts to be so appointed ; and if upon such

analysis the same shall be found to be mixed with other substances or exhausted tea, the same shall not be delivered unless with the sanction of the said commissioners, and on such terms and conditions as they shall see fit to direct, either for home consumption or for use as ships stores or for exportation; but if on such inspection and analysis it shall appear that such tea is in the opinion of the analyst unfit for human food, the same shall be forfeited and destroyed or otherwise disposed of in such manner as the said commissioners may direct.

(*a*) **Repeal.**—The words in italics and square brackets above from "From" down to "seventy-six" are repealed by the Statute Law Revision (No. 2) Act of 1893 (56 & 57 Vict. c. 54).

31. *Definition of "exhausted tea."*—Tea to which the term "exhausted" is applied in this Act shall mean and include any tea which has been deprived of its proper quality, strength, or virtue by steeping, infusion, decoction, or other means.

32. *Provision for the liberty of a cinque port.*—For the purposes of this Act every liberty of a cinque port not comprised within the jurisdiction of a borough shall be part of the county in which it is situated, and subject to the jurisdiction of the justices of such county.

33. *Application of the Act to Scotland.*—In the application of this Act to Scotland the following provisions shall have effect:

1. The term "misdemeanor" shall mean "a crime or offence":

2. The term "defendant" shall mean "defender" and include "respondent":
3. The term "information" shall include "complaint":
4. This Act shall be read and construed as if for the term "justices," wherever it occurs therein the term "sheriff" were substituted:
5. The term "sheriff" shall include "sheriff substitute":
6. The term "borough" shall mean any royal burgh and any burgh returning or contributing to return a member to Parliament:
7. The expenses of executing this Act shall be borne in Scotland, in counties, by the county general assessment, and in burghs, by the police assessment:
8. This Act shall be read and construed as if for the expression "the Local Government Board," wherever it occurs therein, the expression "one of her Majesty's Principal Secretaries of State" were substituted:
9. All penalties provided by this Act to be recovered in a summary manner shall be recovered before the sheriff of the county in the sheriff court, or at the option of the person seeking to recover the same in the police court, in any place where a sheriff officiates as a police magistrate under the provisions of the Summary Procedure Act, 1864, or of the Police Act in force for the time in any place in which a sheriff officiates as aforesaid, and all the jurisdiction, powers, and authorities necessary for this purpose are hereby conferred on sheriffs:

Every such penalty may be recovered at the instance of the procurator fiscal of the jurisdiction, or of the person who caused the analysis to be made from which it appeared that an offence had been committed against some one of the provisions of this Act:

Every penalty imposed and recovered under this Act shall be paid to the clerk of court, and by him shall be accounted for and paid to the treasurer of the county general assessment, or the police assessment of the burgh, as the sheriff shall direct:

10. [*Every penalty imposed by this Act may be reduced or mitigated according to the judgment of the sheriff*] (*a*):

11. It shall be competent to any person aggrieved by any conviction by a sheriff in any summary proceeding under this Act to appeal against the same [*to the next circuit court, or where there are no circuit courts*] (*a*) to the High Court of Justiciary [*at Edinburgh*] (*a*), in the manner prescribed by such of the provisions of the Act of the twentieth year of the reign of King George the Second, chapter forty-three (*b*), and any Acts amending the same, as relate to appeals in matters criminal, and by and under the rules, limitations, conditions, and restrictions contained in the said provisions.

(*a*) **Repeal.**—The words in italics and square brackets above, *i.e.*, the whole of sub-clause 10 and in sub-clause 11 from "to the next" down to "circuit courts," and the words "at Edinburgh," are repealed by the Statute Law Revision (No. 2) Act of 1893 (56 & 57 Vict. c. 54).

(*b*) The Heritable Jurisdiction (Scotland) Act, 1746.

34. *Interpretation of terms in application of Act to Ireland.*—In the application of this Act to Ireland—

The term "borough" shall mean any borough subject to the Act of the session of the third and fourth years of the reign of her present Majesty, chapter one hundred and eight, intituled "An Act for the regulation of Municipal Corporations in Ireland" (*a*) :

The term "county" shall include a county of a city and a county of a town not being a borough :

The term "assizes" shall, with respect to the county of Dublin mean "presenting term" :

The term "treasurer of the county" shall include any person or persons or bank in any county performing duties analogous to those of the treasurer of the county in counties, and, with respect to the county of Dublin, it shall mean the finance committee :

The term "police constable" shall mean, with respect to the police district of Dublin Metropolis, constable of the Dublin Metropolitan Police, and with respect to any other part of Ireland, constable of the Royal Irish Constabulary.

(*a*) The Municipal Corporations (Ireland) Act, 1840.

35. *Commencement of the Act.*—[*This Act shall commence on the first day of October, one thousand eight hundred and seventy-five.*]

This section is repealed by the Statute Law Revision (No. 2) Act, 1893.

36. *Short title.*—This Act may be cited as "The Sale of Food and Drugs Act, 1875."

SCHEDULE. Sect. 18.

FORM OF CERTIFICATE.

To (*a*)

I, the undersigned, public analyst for the , do hereby certify that I received on the day of 18 from (*b*) , a sample of for analysis (which then weighed (*c*)), and have analysed the same, and declare the result of my analysis to be as follows :—

I am of opinion that the same is a sample of genuine

or,

I am of opinion that the said sample contained the parts as under, or the percentages of foreign ingredients as under.

Observations. (*d*)

As witness my hand this day of .

A.B.,

at

(*a*) Here insert the name of the person submitting the article for analysis.

(*b*) Here insert the name of the person delivering the sample.

(*c*) When the article cannot be conveniently weighed, this passage may be erased, or the blank may be left unfilled.

(*d*) Here the analyst may insert at his discretion his opinion as to whether the mixture (if any) was for the purpose of rendering the article portable or palatable, or of preserving it, or of improving the appearance, or was unavoidable, and may state whether in excess of what is ordinary, or otherwise, and whether the ingredients or materials mixed are or are not injurious to health.

In the case of a certificate regarding milk, butter, or any article liable to decomposition, the analyst shall specially report whether any change had taken place in the constitution of the article that would interfere with the analysis.

Variations in form of certificate.—It is advisable, wherever possible, to adhere exactly to the prescribed form of certificate. The following cases show to what extent variations are permissible. It should be observed that the certificate of the

analysts of the Government laboratory (s. 22) need not be in the prescribed form.

Weight of sample.—This need not be stated unless such weight is material to the accuracy of the analysis (*Sneath* v. *Taylor*, [1901] 2 K. B. 376; 17 L. J. K. B. 872; 49 W. R. 719; 65 J. P. 548).

Articles liable to decomposition.—In *Peart* v. *Barstow* (1880), 44 J. P. 699, a case of adulteration of milk, decided at the Middlesex Quarter Sessions, the certificate did not specify whether any change had taken place in the constitution of the article to interfere with the analysis, but merely stated that "the sample was fresh when delivered, securely sealed, and marked A. 48":—*Held*, that a certificate is a condition precedent to a prosecution, that the certificate in this case was informal, and that although the analyst was called and gave evidence, there could be no conviction. This case, however, is not of binding authority. As to the question whether the certificate is a condition precedent to a prosecution, see notes to s. 20, *supra*.

In *Hudson* v. *Bridge*, [1903] 67 J. P. 186; 19 T. L. R. 369, which was a prosecution for selling vinegar of squills deficient in acetic acid, the certificate did not state whether any change had taken place in the constitution of the article. An attempt was made to cure this defect by the evidence of the analyst who was called at the trial. Acetic acid is liable to gradual decomposition if kept for a considerable time. WILLS and CHANNELL, JJ., expressed an opinion that the certificate was bad, and doubted whether the defect could be cured by the oral evidence of the analyst. The actual decision of the court, however, was based upon another point (see note (*d*) to s. 6, *ante*, p. 23).

Parts or ingredients of sample.—In *Bakewell* v. *Davis*, [1894] 1 Q. B. 296; 63 L. J. M. C. 93; 69 L. T. 832; 58 J. P. 228, a milk seller was charged with selling milk deficient in fat to the extent of 22 per cent. The analyst's certificate was as follows: "I am of opinion that the said

sample contained the parts as under, or the percentages of foreign ingredients as under : 22 per cent. of fat less than the natural. Observations : the abstraction of fat is a fraud, and may possibly be injurious to health" :—*Held*, that this observation, though matter of opinion, did not invalidate the certificate, and further that the certificate need not set out the constituent parts of the sample except in cases of adulteration : but it is not easy to reconcile this case with the later decisions of *Newby* v. *Sims* and *Fortune* v. *Hanson*, *infra*.

In *Newby* v. *Sims*, [1894] 1 Q. B. 478 : 63 L. J. M. C. 228 : 70 L. T. 105 ; 58 J. P. 263, the respondent was charged, under s. 6 of the Act of 1879, with selling whisky adulterated with 13 per cent. of water in excess of the proper amount. The analyst's certificate ran as follows : "I find the sample contains an excess of water over and above what is allowed by Act of Parliament. I estimate the excess of water at 13 per cent. of the entire sample. I am of opinion that the said sample is not a sample of genuine whisky." The court held that the certificate was too vague. As it stood it did not disclose any offence : for, for aught that appeared to the contrary, the analyst might not have known of the Act of 1879, which determines the amount of lawful admixture. It was impossible to tell what was the excess of water until it was known what was the quantity exceeded. The certificate ought to have stated the total amount of water found in the sample.

In *Findley* v. *Haas*, [1903] 88 L. T. 465 ; 67 J. P. 198 : 19 T. L. R. 353, which was a prosecution for selling watered brandy, the certificate was as follows : "I am of opinion that the sample contained the parts as under, or percentages of foreign ingredients as under. It has been reduced from 25 degrees under proof to 27·6 degrees under proof." The justices, on the authority of *Newby* v. *Sims*, *supra*, held that the certificate was not in proper form, since it did not state the percentages of pure spirit and water. But Lord Alverstone, C.J., and Wills and Channell, JJ., held that the certificate disclosed an offence and was sufficient. The distinction between this case and the previous one, of course

is that in this case the analyst showed that he knew the provisions of s. 6 of the Act of 1879, and stated how far the sample fell below the requirements of that section.

In *Fortune* v. *Hanson*, [1896] 1 Q. B. 202; 65 L. J. M. C. 71; 74 L. T. 145; 44 W. R. 431; 18 Cox C. C. 258; 60 J. P. 88, the prosecution was under s. 6 of this Act in respect of a sample of milk taken in the course of delivery under s. 3 of the Act of 1879. The analyst's certificate was as follows: "I am of opinion that the said sample contained the percentage of foreign ingredients as under: 5 per cent. of added water to the prejudice of the purchaser":—*Held*, that this certificate was bad as evidence of adulteration, because it did not state the constituent parts of the sample analysed, and that in such a case as this, the constituent parts ought to be stated. In the course of his judgment, Baron BRAMPTON, then HAWKINS, J., said: "If the analyst found in the milk some material substance which ought not to be found in milk at all, it would be sufficient for the certificate to state that the sample . . . contained so much per cent. of foreign ingredient, but when the magistrates have to decide whether the sample contained . . . added water, the question becomes much more difficult, because water is to be found in milk in its most pure state . . . I think the magistrates are entitled to enquire, and the Legislature intended they should have a statement in such a case as this, of the parts of which the sample was composed. To say merely that a sample of milk contained five per cent. of added water, is only to state the analyst's own opinion that water has been added. The magistrates have to exercise their own judgment on the question . . . they ought to be informed . . . what was the total percentage of water." And KENNEDY, J., said: "Where the thing said to be added is one of the constituents of the article analysed . . . the analyst . . . must state the facts on which he has come to his conclusion sufficiently to enable the magistrates to come to a conclusion themselves."

The last-mentioned case was distinguished in *Bridge* v. *Howard*, [1897] 1 Q. B. 80; 65 L. J. M. C. 229; 75 L. T.

300 ; 45 W. R. 78 ; 18 Cox C. C. 421 ; 60 J. P. 790, which was also a prosecution under s. 6 of this Act. The analyst's certificate was as follows : "I am of opinion that the sample contains the parts as under : milk, 94 per cent. ; added water, 6 per cent. This opinion is based on the fact that the sample contained 7·97 solids not fat, whereas genuine milk contains not less than 8·5 solids not fat" :—*Held*, that the certificate was good, and KENNEDY, J., said : "What the analyst has done here has been, not only to state the percentage of added water, but also to give the scientific basis on which his conclusion rests ; and, therefore, I think that . . . the certificate in this case is good. . . . The certificate differs from that in *Fortune* v. *Hanson*, because it gives the reasons for the analyst's conclusion, and on the information so given the party charged can, if he thinks proper, act and the justices can form a judgment."

In *Lee* v. *Bent* and *Barlow* v. *Noblett*, [1901] 2 K. B. 290 ; 70 L. J. K. B. 747 ; 84 L. T. 719 ; 49 W. R. 684 ; 65 J. P. 646, two beer-sellers were prosecuted under s. 6 for selling beer containing arsenic, and were convicted. The analyst certified in one case that the beer "contained arsenic," and in the other, that it contained "a serious quantity of arsenic." Lord ALVERSTONE, C.J., and LAWRANCE and PHILLIMORE, JJ., held that the certificates were not sufficient, and Lord ALVERSTONE, C.J., said : "We are all of opinion that these two certificates are not sufficient. It is very important that the practice should be uniform, and we think it is clear that the certificate of the analyst must be a document in proper form, and that that certificate ought to contain in it sufficient materials to enable the magistrates to form a judgment on those materials whether the offence charged had been committed."

SALE OF FOOD AND DRUGS ACT AMENDMENT ACT, 1879.

(42 & 43 Vict. c. 30.)

An Act to amend the Sale of Food and Drugs Act. 1875. [21st July 1879.]

Whereas conflicting decisions have been given in England and in Scotland in regard to the meaning and effect of section six of the Sale of Food and Drugs Act, 1875, in this Act referred to as the principal Act, and it is expedient, in this respect and otherwise, to amend the said Act:

1. *Short title.*—This Act may be cited for all purposes as the Sale of Food and Drugs Act Amendment Act, 1879.

2. *In sale of adulterated articles no defence to allege purchase for analysis.*—In any prosecution under the provisions of the principal Act for selling to the prejudice of the purchaser any article of food or any drug which is not of the nature, substance, and quality of the article demanded by such purchaser, it shall be no defence to any such prosecution to allege that the purchaser, having bought only for analysis, was not prejudiced by such sale. Neither shall it be a good defence to prove that the article of food or drug in question, though defective in nature or in substance or in quality, was not defective in all three respects.

This section was rendered necessary by the decision of the Court of Justiciary in Scotland, in the case of *Davidson* v. *M'Leod* (1877), 5 Rettie (J.C.) 1 ; 3 Couper, 511 ; 42 J. P. 43, where it was held that an official purchaser, under s. 13 of the Act of 1875, buying samples for analysis and not for consumption or at his own expense, could not be prejudiced by the purchase, and that, consequently, no offence was created under s. 6 of the Act of 1875. The court also held that the words "nature, substance, and quality" in s. 6 could not be disjoined, and that it was necessary in order to secure a conviction that the article in question should be defective in all three respects. See notes to s. 6 of the Act of 1875, *ante*. Although the English courts did not follow this decision (see *Hoyle* v. *Hitchman* (1879). 4 Q. B. D. 233 ; 48 L. J. M. C. 97 ; 40 L. T. 252 ; 27 W. R. 487 ; 43 J. P. 431), the Act was thereby rendered practically inoperative in Scotland until the amending section was passed.

3. *Officer, inspector, or constable may obtain a sample of milk* (*a*) *at the place of delivery to submit to analyst.*— Any medical officer of health, inspector of nuisances, or inspector of weights and measures, or any inspector of a market, or any police constable (*b*) under the direction and at the cost of the local authority appointing such officer, inspector, or constable, or charged with the execution of this Act, may procure at the place of delivery (*c*) any sample of any milk in course of delivery (*c*) to the purchaser or consignee in pursuance of any contract (*d*) for the sale to such purchaser or consignee of such milk ; and such officer, inspector, or constable, if he suspect the same to have been sold contrary to any of the provisions of the principal Act, shall submit the same to be analysed (*e*), and the same shall be analysed, and proceedings shall be taken (*f*), and penalties on conviction be enforced in like manner

in all respects as if such officer, inspector, or constable had purchased the same from the seller or consignor (*a*) under section thirteen of the principal Act.

(*a*) **Extension to other articles.**—The provisions of this and the following section are now applied, by s. 14 of the Act of 1899, to every other article of food, with the proviso, however, that every sample taken under s. 14 of the Act of 1899 must be taken at the request, or with the consent, of the purchaser or consignee.

(*b*) **Who may take samples — Deputy.** — The question whether, under this section, any of the officials named can appoint a deputy to act for him, is one which is not wholly free from difficulty, and has never been authoritatively decided ; but in the case of *Holt* v. *Morris* (1893), 57 J. P. 441, which was an appeal to quarter sessions, the Recorder of West Bromwich held that an official "cannot himself act by any mere assistant, agent, or deputy. I do not mean," he added, "that such official must necessarily take the sample with his own hand, but he must, I think, be present when it is taken so as to be able to see for himself and to personally vouch for the manner in which the sample is procured."

Private person.—A private person cannot take a sample or proceed under this section (*Harris* v. *Williams* (1889), 6 T. L. R. 47).

Officers of other local authorities. — Apparently this section can only be put in motion by the local authority within whose district the place of delivery is situated. In *McNair* v. *Care*, [1903] 1 K. B. 24 ; 72 L. J. K. B. 26 ; 87 L. T. 680 ; 51 W. R. 112 ; 67 J. P. 50, a Derbyshire farmer was in the habit of supplying milk to a dairy in Westminster, the place of delivery being in St. Pancras. The Westminster inspector took a sample at the place of delivery and had it analysed by the Westminster analyst. It turned out to contain 21 per cent. of added water, so proceedings were taken against the farmer. Lord ALVERSTONE, C.J., and WILLS and CHANNELL, JJ., held

that the inspector had no power under the section to take samples in any place outside his own district.

(*c*) **"Place of delivery."**—The words "at the place of delivery" and "in the course of delivery" are important. A sample of milk (or of any other article under s. 14 of the Act of 1899) may not be taken while the article is in transit, or after the delivery of the article has been completed. Under certain circumstances the question what is the actual place of delivery becomes a somewhat difficult one. In *Filshie* v. *Evington*, [1892] 2 Q. B. 200; 66 L. T. 199; 40 W. R. 380; 56 J. P. 312; 17 Cox C. C. 481, a dairyman who lived at Castle Donington contracted with a dairy company under an agreement, which was contained in a printed form, for the sale to them of milk from his dairy to be delivered in London or at such other station as the purchasers might from time to time appoint. The carriage of the milk from Castle Donington was to be paid by the purchasers. The purchasers appointed Hull as a station for the delivery of milk under the contract, and the dairyman consigned milk from Castle Donington to the purchasers at Hull. Immediately upon its arrival at Hull, and before possession was taken of it by the purchasers, a sample of it was taken by an inspector, which was found to be adulterated. It was contended on behalf of the dairyman that Castle Donington, and not Hull, was the place of delivery, on the ground that there was a provision in the contract for the payment of the carriage by the purchasers between Castle Donington and Hull; but it was held that, in spite of this provision, Hull was the place of delivery within the meaning of the section. A similar decision was given in the case of *Lush* v. *Wilson* (1890), 54 J. P. 73, which was an appeal to quarter sessions. In that case there was a verbal agreement between a farmer and a retail milkseller that a certain quantity of milk should be delivered to the latter every day. The first deliveries were made at Basingstoke, but eventually the milk was sent on every day to Reading, the milkseller paying the carriage from Basingstoke. A sample was taken at Reading, and a conviction was ultimately obtained, and upheld in spite

of the contention that Basingstoke and not Reading was the "place of delivery." See also *McNair* v. *Care* in note (*b*), *ante*.

(*d*) **"Contract."**—In *Phelan* v. *Rorke* (1883), 17 Ir. L. T. 649, a milkman was hawking milk from door to door. While he was pouring some milk into a customer's jug an inspector came up and demanded a sample, which was refused. There was no evidence of any contract except as above, but the Exchequer Division had no difficulty in holding that the milk was being delivered "in pursuance of a contract," and that the milkman was rightly convicted of an offence under s. 4, *infra*.

(*e*) **Formalities to be observed.**—In procuring a sample under this section, it is not necessary to comply with the provisions of s. 14 of the principal Act, as amended by s. 13 of the Act of 1899 (see the cases of *Rouch* v. *Hall* (1889), 6 Q. B. D. 17; 50 L. J. M. C. 6; 29 W. R. 304; 45 J. P. 220; *Rolfe* v. *Thompson*, [1892] 2 Q. B. 196; 61 L. J. M. C. 184; 67 L. T. 295; 56 J. P. 425; 17 Cox C. C. 551; and *Morton* v. *Fyfe* (1896), 24 Rettie (J.C.), 9; 2 Adam, 174; 34 Sc. L. R. 55, which are noted under s. 14 of the principal Act, *ante*, p. 50). But by s. 10 of the Act of 1899 (*post*, p. 126), if the article sampled is milk, margarine, or margarine-cheese, a portion of the sample must be forwarded to the consignor if his name and address appear on the can or package containing the article sampled.

(*f*) **Separate offences.**—There can be separate informations laid in respect of samples taken from more than one can. In *Fecitt* v. *Walsh*, [1891] 2 Q. B. 304; 60 L. J. M. C. 143; 65 L. T. 82; 39 W. R. 525; 55 J. P. 726; 17 Cox C. C. 322, a case which has already been referred to under s. 9 of the principal Act, an inspector procured a sample from each of five cans in the course of delivery, and, upon its being found that there was a deficiency of cream in two of the samples submitted to analysis, laid two separate informations in respect of them:—*Held*, that the procuring of each sample was

a separate transaction, and that the milkseller had committed a separate offence in respect of each can which was deficient, and that, therefore, the two informations were properly laid and that there could be two convictions.

(*g*) **Seller or consignor.**—The person to be prosecuted is the seller or consignor himself. If the summons alleges a sale by the consignor "by the hands of A. B., his servant or agent," and it turns out that A. B. was not his servant or agent for sale but merely a carrier, there is a technical defect in the summons, but this defect being a mere variance is cured by s. 1 of the Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43) (*Hiett* v. *Ward* (1894), 70 L. T. 374 ; 58 J. P. 461 ; 10 T. L. R. 284).

4. *Penalty for refusing to give milk* (*a*) *for analysis.*—The seller or consignor or any person or persons entrusted by him for the time being with the charge of such milk, if he shall refuse to allow such officer, inspector, or constable to take the quantity which such officer, inspector, or constable shall require for the purpose of analysis, shall be liable to a penalty (*b*) not exceeding ten pounds.

(*a*) **Extension to other articles.**—The provisions of this and the preceding section are now applied by s. 14 of the Act of 1889 (*post*, p. 128) to every other article of food, with the proviso, however, that every sample taken under s. 14 of the Act of 1899 must be taken at the request or with the consent of the purchaser or consignee.

(*b*) **Penalty.**—This cannot be increased upon a second conviction. See s. 17 of the Act of 1899, *post*, p. 129.

The penalties inflicted by some petty sessional courts are quite inadequate. See circular letter from the Home Office to Clerks to Justices, dated July 24th, 1902, in the Appendix, *post*, p. 171.

5. *Sale in streets, etc.*—Any street or open place of public resort shall be held to come within the meaning of section seventeen of the principal Act.

See notes to s. 17 of the principal Act, *ante*, p. 56.

6. *Reduction of spirit allowed.* — In determining whether an offence has been committed under section six of the said Act by selling, to the prejudice of the purchaser, spirits not adulterated otherwise than by the admixture of water, it shall be a good defence to prove that such admixture has not reduced the spirit more than twenty-five degrees under proof for brandy, whisky, or rum, or thirty-five degrees under proof for gin.

Prior to the passing of the Act of 1879, there existed, under the principal Act, considerable diversity of practice among public analysts with respect to the strength below which they deemed spirits adulterated or unduly watered. The object of the section was to lay down fair and reasonable standards of strength, and thereby establish uniformity of practice in the application of s. 6 of the principal Act to the sale of spirits throughout the kingdom. This legislation was hastened by the decisions which were given in *Pashler* v. *Stevenitt* (1876), 35 L. T. 862; 41 J. P. 136 (*ante*, p. 20); and in *Webb* v. *Knight* (1877), 2 Q. B. D. 530; 46 L. J. M. C. 264; 36 L. T. 791; 26 W. R. 14; 41 J. P. 726. This section does not prevent the seller from availing himself of any other defence that he may have. Thus if spirits are sold diluted beyond the limit allowed by this section, the seller cannot be convicted if he draws the attention of the purchaser, either verbally or by a notice, at the time of the sale, to the extent of the dilution, since the purchaser would be held to have obtained an article of the nature, substance, and quality demanded by him. See *Gage* v. *Elsey*; *Sandys* v. *Small*, and the other cases cited in note (*b*) to s. 6 of the Act of 1875, *ante*, p. 13.

7. *Extension of meaning of "county."*—Every liberty having a separate court of quarter sessions, except a liberty of a cinque port (*a*), shall be deemed to be a county within the meaning of the said Act.

(*a*) See s. 32 of the principal Act, *ante*, p. 83.

8. *Quarter sessions boroughs not to contribute to county analyst.*—[*The town council of any borough having a separate court of quarter sessions shall be exempt from contributing towards the expenses incurred in the execution of the principal Act in respect of the county within which such borough is situate, and the treasurer of the county shall exclude the expenses so incurred from the account required by section one hundred and seventeen of the Municipal Corporations Act*, 1835, *to be sent by him to such town council.*]

Repeal and re-enactment.—The above section is repealed by s. 5 of the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), and by the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56), but is in effect re-enacted by s. 152 of the former Act (*q.v.*).

9. *Provision for boroughs with separate police.*—The town council of any borough having under any general or local Act of Parliament, or otherwise, a separate police establishment, and being liable to be assessed to the county rate of the county within which the borough is situate, shall be paid by the justices of such county (*a*) the proportionate amount contributed towards the expenses incurred by the county in the execution of the principal Act by the several parishes and parts of parishes within such borough in respect of the rateable

value of the property assessable therein, as ascertained by the valuation lists for the time being in force.

(*a*) **County justices.**—Now by the county council (Local Government Act, 1888).

10. *Special provision as to time for proceedings.*—[*In all prosecutions under the principal Act, and notwithstanding the provisions of section twenty of the said Act, the summons to appear before the magistrates shall be served upon the person charged with violating the provisions of the said Act within a reasonable time, and in the case of a perishable article not exceeding twenty-eight days from the time of the purchase from such person for test purposes of the food or drug, for the sale of which in contravention to the terms of the principal Act the seller is rendered liable to prosecution, and particulars of the offence or offences against the said Act of which the seller is accused, and also the name of the prosecutor, shall be stated on the summons, and the summons shall not be made returnable in a less time than seven days from the day it is served upon the person summoned.*]

Repeal and re-enactment.—This section is repealed by s. 27 of the Act of 1899, but re-enacted with some alterations by s. 19 of the same Act, *post*, p. 130.

MARGARINE ACT, 1887.

(50 & 51 Vict. c. 29.)

An Act for the better Prevention of the Fraudulent Sale of Margarine. [23rd August 1887.]

Whereas it is expedient that further provision should be made for protecting the public against the sale as butter of substances made in imitation of butter, as well as of butter mixed with any such substances :

Be it therefore enacted, &c.

1. *Short title.*—This Act may be cited as the Margarine Act, 1887.

2. *Commencement of Act.*—This Act shall come into operation on the first day of January one thousand eight hundred and eighty-eight.

3. *Definition.*—The word "butter" shall mean the substance usually known as butter, made exclusively from milk or cream, or both, with or without salt or other preservative, and with or without the addition of colouring matter.

The word "margarine" (*a*) shall mean all substances, whether compounds or otherwise, prepared in imitation of butter, and whether mixed with butter or not, and no such substance shall be lawfully sold, except under the name of margarine, and under the conditions set forth in this Act.

Margarine-cheese.—For definition of "cheese" and "margarine-cheese," see s. 25 of the Act of 1899, *post*, p. 141.

(*a*) **Margarine.**—The two following cases illustrate this definition:—In *Burton* v. *Mattinson* (1902), 86 L. T. 770: 66 J. P. 628, the purchaser had asked for margarine and had obtained margarine which contained 21 per cent. of water. The analyst certified that this was at least 5 per cent. more water than margarine should contain. The seller argued that by this definition the word "margarine" means all substances prepared in imitation of butter, and that this substance was an imitation of butter, and was therefore margarine: but Lord ALVERSTONE, C.J., and DARLING and CHANNELL, JJ., held that the substance sold was not margarine, but margarine and water, and that the justices had been right in convicting the seller of an offence under s. 6 of the Act of 1875. In *Bayley* v. *Pearks, Gunston and Tee, Limited* (1902), 87 L. T. 67: 66 J. P. 790; Lord ALVERSTONE, C.J., and DARLING and CHANNELL, JJ., held that "Pearks' Butter" (a mixture of butter and milk) is not margarine within this definition, and therefore may be sold, notwithstanding s. 8 of the Act of 1899 (*q.v.*), although containing more than 10 per cent. of butter fat.

4. *Penalty.*—Every person dealing in margarine (*a*), whether wholesale or retail, whether a manufacturer, importer, or as consignor or consignee, or as commission agent or otherwise, who is found guilty of an offence under this Act, shall be liable on summary conviction for the first offence to a fine (*b*) not exceeding twenty pounds, and for the second offence to a fine (*b*) not exceeding fifty pounds, and for the third or any subsequent offence to a fine (*b*) not exceeding one hundred pounds (*c*).

(*a*) Or Margarine-cheese.—See s. 5 of the Act of 1899. For penalty for selling margarine containing more than 10 per cent. of butter fat, see s. 8 of the Act of 1899.

(*b*) **Fine.**—The fines inflicted by some petty sessional courts are quite inadequate. See circular letter from the Home Office to Clerks to Justices, dated July 24th, 1902, in the Appendix, *post*, p. 171.

(*c*) By s. 17 of the Act of 1899 (*post*, p. 129) the offender may also be imprisoned in certain circumstances.

5. *Exemption from penalty.*—Where an employer is charged with an offence against this Act he shall be entitled, upon information duly laid by him, to have any other person whom he charges as the actual offender brought before the court at the time appointed for hearing the charge, and if, after the commission of the offence has been proved, the employer proves to the satisfaction of the court that he had used due diligence to enforce the execution of this Act, and that the said other person had committed the offence in question without his knowledge, consent, or connivance, the said other person shall be summarily convicted of such offence, and the employer shall be exempt from any penalty.

6. *Marking of cases.*—Every person dealing in margarine (*a*) in the manner described in the preceding section shall conform to the following regulations:

Every package (*f*), whether open or closed, and containing margarine (*a*), shall be branded or durably marked "Margarine" (*a*) on the top, bottom, and sides, in printed capital letters, not less than three quarters of an inch square; and if such margarine (*a*) be exposed for sale (*b*), by retail (*c*), there shall be attached to each parcel thereof so exposed, and in such manner as to be clearly visible to the purchaser, a label (*d*) marked in printed capital letters not less than

one and a half inches square, "Margarine" (*a*); and every person selling margarine (*a*) by retail (*c*), save in a package duly branded or durably marked as aforesaid, shall in every case deliver the same to the purchaser in [*or with*] (*e*) a paper wrapper (*f*), on which shall be printed in capital letters, [*not less than a quarter of an inch square,*] (*g*) "Margarine" (*a*).

(*a*) Or margarine-cheese (s. 5 of the Act of 1899).

(*b*) **"Exposed for sale."**—In *Crane* v. *Lawrence* (1890), 25 Q. B. D. 152; 59 L. J. M. C. 110; 63 L. T. 197; 38 W. R. 620; 54 J. P. 471, an inspector was served with a portion of margarine cut off a parcel of the substance which was lying on the counter concealed by a screen in such a manner as to be invisible to a customer in the shop. The portion so handed to the inspector was wrapped in the wrapper required by the section. The Divisional Court held that the parcel of margarine so concealed by the screen was not "exposed for sale" within the meaning of the section, and, therefore, needed no label.

In *Wheat* v. *Brown*, [1892] 1 Q. B. 418; 61 L. J. M. C. 94; 66 L. T. 464; 40 W. R. 462; 56 J. P. 153, there was a notice in a shop window advertising "Danish butter." An inspector went in and asked for some. On the counter there was a heap of paper parcels, each of which had the word "Margarine" printed on it. One of these was handed to the inspector, and was found to contain margarine. The shopkeeper was summoned for neglecting to attach to the heap the label required by the section, but the Bench dismissed the summons, holding, on the authority of *Crane* v. *Lawrence*, that the margarine being wrapped in paper, and, therefore, invisible to the purchaser, was not "exposed for sale" within the meaning of the section. The Divisional Court reversed this decision on the ground that the justices had taken an erroneous view of *Crane* v. *Lawrence*. WRIGHT, J., said: "I entirely agree with the decision in *Crane* v. *Lawrence*, which was, in effect, that there was no exposure for sale when margarine was stored in a back room or cellar. The

decision is simply that margarine which cannot in any sense be seen by the purchaser is not exposed for sale. In this case, the justices refused to convict the defendant upon the ground that the second part of s. 6 does not apply to margarine which is wrapped up in paper. That, in my opinion, is a wrong view of the section. The expression 'exposed for sale' is a well-understood term, and cannot be limited so as to mean only 'exposed to view.'"

(*c*) **"By retail."**—This does not apply to sales of margarine for consumption on the premises. In *Moore* v. *Pearce's Dining and Refreshment Rooms, Limited*, [1895] 2 Q. B. 657 ; 65 L. J. M. C. 7 ; 73 L. T. 400 ; 44 W. R. 94 ; 59 J. P. 805 ; 18 Cox C. C. 196, the proprietors of an eating-house sold to their customers slices of bread spread with a mixture of butter and margarine, and also haddocks with a piece of the mixture on each, cut from a lump of the mixture kept on a shelf. The sales were for consumption on the premises only. There were no margarine labels or wrappers on the slices or on the lump of mixture, but there were conspicuous notices hanging over the plates of slices calling attention to the composition of the mixture. The court held that no offence had been committed under this section, and Lord Russell of Killowen, C.J., said : "The question comes to this : was the case one in which margarine was exposed for sale by retail within the meaning of s. 6 ? In order to arrive at a conclusion as to this, one must read the concluding portion of the section. . . . That shows what the character of the sale intended to be dealt with by the section is ; and it is perfectly obvious that the machinery provided by the section is inapplicable to the course of business as it is carried on at this establishment. It would be absurd to apply the provision as to using a wrapper to each separate piece of margarine when spread on the bread or used with the haddock."

Wholesale.—For wholesale sales of margarine-cheese, see s. 5 of the Act of 1899, *post*, p. 121.

(*d*) **"Label."**—By s. 6 (1) of the Act of 1899 : "Where under this Act or the Margarine Act, 1887, it is required that

any package containing margarine or margarine-cheese shall be branded or marked, the brand or mark shall be on the package itself and not solely on a label, ticket, or other thing attached thereto."

(*e*) **Repeal.**—The words in italics and square brackets are repealed by s. 6 (3) of the Act of 1899, and again by s. 27 of the same Act.

(*f*) **"Wrapper."**—The question has arisen as to whether the wrapper referred to must be the outside wrapper or not. In *World's Tea Co.* v. *Gardner* (1895), 59 J. P. 358, margarine was sold in wrappers duly marked "margarine," but before delivery to the purchaser a second wrapper was put on which concealed the first one. This was held to be no infringement of the section. But in the later case of *Toler* v. *Bischop* (1895), 65 L. J. M. C. 4; 75 L. T. 403; 60 J. P. 9; 18 Cox C. C. 202, Lord RUSSELL OF KILLOWEN, C.J., and CAVE, J., although the point did not actually arise in the case, expressed a strong opinion that it is the outside wrapper which should be marked. See also note (*b*) to s. 8 of the Act of 1875, *supra*, p. 31.

Toler v. *Bischop* also shows that the word "wrapper" in the section bears a very wide meaning. In that case, a pound of margarine was sold in a cardboard box, to which a folded paper (containing an advertisement of margarine) was attached by a paper band. The word "margarine" in letters of the required size was printed partly on the box, partly on the paper, and partly on the band:—*Held*, that the box, paper and band together constituted a wrapper within the meaning of the section. *Held*, further, that the box was not a "package" within the meaning of the first part of the section, and the court seemed to be of opinion that that part of the section does not apply to sales by retail.

(*g*) **Substituted provision.** — The words in italics and square brackets are repealed by s. 27 of the Act of 1899, and s. 6 (2) of that Act, *post*, p. 122, says that the letters must be

capital block letters not less than half an inch long and distinctly legible ; and provides that no other printed matter shall appear on the wrapper.

7. *Presumption against vendor.* — Every person dealing with, selling, or exposing, or offering for sale (*a*), or having in his possession for the purpose of sale, any quantity of margarine (*b*) contrary to the provisions of this Act, shall be liable to conviction for an offence (*c*) against this Act, unless he shows to the satisfaction of the court before whom he is charged that he purchased the article in question as butter (*d*), and with a written warranty or invoice (*e*) to that effect, that he had no reason to believe at the time when he sold it that the article was other than butter (*d*), and that he sold it in the same state as when he purchased it, and in such case he shall be discharged from the prosecution, but shall be liable to pay the costs incurred by the prosecutor unless he shall have given due notice to him that he will rely upon the above defence (*f*).

(*a*) **Offering for sale.**—An offer to sell is not an offering for sale. In *World's Tea Co.* v. *Gardner* (1895), 59 J. P. 358, a handbill offering to every purchaser of "Kylos Creamery" (a preparation of margarine) a bonus of one pound on every two pounds purchased was held not to be an "offering for sale" although it was an offer to sell.

(*b*) Or margarine-cheese (s. 5 of the Act of 1899).

(*c*) **Guilty knowledge.**—In *Fitzgerald* v. *Leonard*, [1893] 32 I. R. 675, the Irish Queen's Bench Division held that guilty knowledge on the part of the defendant is necessary to complete an offence under the Act, and that s. 7 merely throws upon the defendant the burden of proving the absence of such

guilty knowledge. But it is very improbable that this view would be taken in England. See *Betts* v. *Armstead* (1888), 20 Q. B. D. 771 ; 57 L. J. M. C. 100 ; 58 L. T. 811 ; 36 W. R. 720 ; 52 J. P. 471 ; 16 Cox C. C. 418, and note (*a*) to s. 6 of the Act of 1875, *ante*, p. 10.

(*d*) Or cheese (s. 5 of the Act of 1899).

(*e*) **Warranty or invoice.**—The words "or invoice" are important. They do not occur in the corresponding section (25) of the Act of 1875, and the result is that an invoice under the Margarine Act is a defence, although it may not amount to a warranty at law. See note (*c*) to s. 25 of the Act of 1875, *ante*, p. 70. With the above exception, the notes to that section are applicable to this.

(*f*) **Further provisions.**—The concluding sentence of this section from the words "but shall be liable" to the end, though not in terms repealed, is no longer effective, since s. 20 of the Act of 1899 (*post*, p. 135) introduces a new and far more stringent set of provisions with regard to the defence of warranty.

8. *Margarine imported or manufactured.*—All margarine (*a*) imported (*b*) into the United Kingdom of Great Britain and Ireland, and all margarine (*a*) whether imported or manufactured within the United Kingdom of Great Britain and Ireland, shall, whenever forwarded by any public conveyance, be duly consigned as margarine (*a*) ; and it shall be lawful for any officer of Her Majesty's Customs or Inland Revenue, or any medical officer of health, inspector of nuisances, or police constable, authorised under section thirteen of the Sale of Food and Drugs Act, 1875, to procure samples for analysis if he shall have reason to believe that the provisions of this Act are infringed on this behalf, to examine and take samples (*c*) from any package, and ascertain, if necessary by submitting the

same to be analysed, whether an offence against this Act has been committed.

(*a*) Or margarine-cheese (s. 5 of the Act of 1899).

(*b*) **Imported margarine.**—Imported margarine or margarine-cheese must, by s. 1 of the Act of 1899, be contained in packages conspicuously marked "Margarine" or "Margarine-cheese."

(*c*) **Samples.**—See also powers given to the Commissioners of Customs, the Local Government Board, and the Board of Agriculture to take samples in certain cases (ss. 1—4 of the Act of 1899). Note also that by s. 10 of the same Act a portion of the sample must be sent to the consignor.

9. *Registration of manufactory* (*a*).—Every manufactory of margarine (*b*) within the United Kingdom of Great Britain and Ireland shall be registered (*c*) by the owner or occupier thereof with the local authority from time to time in such manner as the Local Government Boards of England and Ireland and the Secretary for Scotland respectively may direct (*d*), and every such owner or occupier carrying on such manufacture in a manufactory not duly registered shall be guilty of an offence (*e*) under this Act.

(*a*) **Further regulations.**—For further regulations affecting manufacturers of and dealers in margarine and margarine-cheese, see s. 7 of the Act of 1899, *post*, p. 123.

(*b*) **Extension of section.**—This section is extended by s. 7 (4) of the Act of 1899 to any premises wherein the business of a wholesale dealer in margarine or margarine cheese is carried on.

(*c*) **Notification of registration.**—The registration must be forthwith notified to the Board of Agriculture by the local authority (s. 7 (5) of the Act of 1899).

(*d*) **Order of Local Government Board.**—For the manner of registration and the necessary forms, see orders of the Local Government Board dated December 22nd, 1887, and February 26th, 1900, in the Appendix, *post*, pp. 145, 148.

(*e*) **New offences.**—Section 7 (3) of the Act of 1899 (*q.v.*) creates five new offences.

10. *Power to inspectors to take samples without purchase.*—Any officer (*a*) authorised to take samples under the Sale of Food and Drugs Act, 1875, may, without going through the form of purchase provided by that Act, but otherwise acting in all respects in accordance with the provisions of the said Act as to dealing with samples, take for the purposes of analysis samples of any butter (*b*), or substances purporting to be butter (*b*), which are exposed for sale, and are not marked Margarine (*c*), as provided by this Act; and any such substance not being so marked shall be presumed to be exposed for sale as butter (*b*).

(*a*) **Officers authorised to take samples.**—The powers given to "officers" under this section are extended by ss. 1, 2, and 3 of the Act of 1899 to officers of the Commissioners of Customs, the Local Government Board, and the Board of Agriculture.

(*b*) Or cheese (s. 5 of the Act of 1899).

(*c*) Or margarine-cheese (s. 5 of the Act of 1899).

11. *Appropriation of penalties.*—Any part of any penalty recovered under this Act may, if the court shall so direct (*a*), be paid to the person who proceeds for the same, to reimburse him for the legal costs of obtaining the analysis, and any other reasonable expenses to which the court shall consider him entitled.

(*a*) **Payment of penalty.**—In the absence of any direction by the court, the penalty is to be paid to the officer of the local authority prosecuting, and not to the police. See *R.* v. *Titterton*, [1895] 2 Q. B. 61; 64 L. J. M. C. 202; 73 L. T. 345; 43 W. R. 603; 59 J. P. 327; 18 Cox C. C. 181.

12. *Proceedings.*—All proceedings under this Act shall, save as expressly varied by this Act, be the same as prescribed by sections twelve to twenty-eight inclusive of the Sale of Food and Drugs Act, 1875, and all officers employed under that Act are hereby empowered and required to carry out the provisions of this Act.

13. *Definition of local authority.*—The expression "local authority" shall mean any local authority authorised to appoint a public analyst under the Sale of Food and Drugs Act, 1875 (*a*).

(*a*) See ss. 10 and 11 of the Act of 1875, *ante*, pp. 40 and 42.

SALE OF FOOD AND DRUGS ACT, 1899.

(62 & 63 Vict. c. 51.)

An Act to amend the law relating to the Sale of Food and Drugs. [9th August 1899.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. *Precautions against importation of agricultural and other produce insufficiently marked.*—(1) If there is imported into the United Kingdom any of the following articles, namely :

(a) margarine or margarine-cheese, except in packages conspicuously marked (*a*) "Margarine" or "Margarine-cheese," as the case may require ; or

(b) adulterated or impoverished butter (other than margarine) or adulterated or impoverished milk or cream, except in packages or cans conspicuously marked (*a*) with a name or description indicating that the butter or milk or cream has been so treated ; or

(c) condensed separated or skimmed milk, except in tins or other receptacles which bear a label (*b*) whereon the words "Machine-skimmed Milk" or "Skimmed Milk," as the case may require, are printed in large and legible type ; or

(d) any adulterated or impoverished article of food

to which Her Majesty may by Order in Council direct that this section shall be applied, unless the same be imported in packages or receptacles conspicuously marked (*a*) with a name or description indicating that the article has been so treated ;

the importer shall be liable (*c*), on summary conviction, for the first offence to a fine not exceeding twenty pounds, for the second offence to a fine not exceeding fifty pounds, and for any subsequent offence to a fine not exceeding one hundred pounds (*d*).

(2) The word "importer" shall include any person who, whether as owner, consignor, or consignee, agent, or broker, is in possession of, or in anywise entitled to the custody or control of, the article ; prosecutions for offences under this section shall be undertaken by the Commissioners of Customs ; and subject to the provisions of this Act this section shall have effect as if it were part of the Customs Consolidation Act, 1876.

(3) The Commissioners of Customs shall, in accordance with directions given by the Treasury after consultation with the Board of Agriculture, take such samples of consignments of imported articles of food as may be necessary for the enforcement of the foregoing provisions of this section.

(4) Where the Commissioners of Customs take a sample of any consignment in pursuance of such directions they shall divide it into not less than three parts, and send one part to the importer and one part to the principal chemist of the Government laboratories (*e*), and retain one part.

(5) In any proceeding under this section the certificate of the principal chemist of the result of the

analysis shall be sufficient evidence (*f*) of the facts therein stated, unless the defendant require that the person who made the analysis be called as a witness.

(6) If, in any case, the Commissioners of Customs are of opinion that an offence against this section has been committed, they shall communicate to the Board of Agriculture for their information the name of the importer and such other facts as they possess or may obtain as to the destination of the consignment.

(7) For the purposes of this section an article of food shall be deemed to be adulterated or impoverished if it has been mixed with any other substance, or if any part of it has been abstracted so as in either case to affect injuriously its quality, substance, or nature.

Provided that an article of food shall not be deemed to be adulterated by reason only of the addition of any preservative or colouring matter of such a nature and in such quantity as not to render the article injurious to health (*g*).

Enforcement of provisions.—The important point to be noted in connection with this section is that its provisions are enforceable not by the local authority, or private individuals, as in the case of prosecutions under the previous Acts, but by the Commissioners of Customs, and by them alone. This distinguishes it from provisions in the Margarine Act which are similar in other respects. Thus, under s. 6 of that Act, an importer of margarine is liable to a prosecution by the local authority if the packages containing the margarine are not marked in a particular way, while under s. 8 of the same Act the Commissioners of Customs have power to take samples where they have reason to suspect that the Margarine Act has been infringed (*cf.* also s. 30 of the Act of 1875). Now the Commissioners of Customs have not only power to take samples, but they may also prosecute if an offence against this section has been committed; and further, their power to take samples

is considerably widened (sub-s. (3)), and they may prosecute in respect of any of the articles mentioned in the section.

Definitions.—For definitions of "Butter" and "Margarine," see s. 3 of the Margarine Act, *ante*, p. 101. "Margarine-cheese" is defined in s. 25 of this Act, *post*, p. 141; "Food" in s. 26, *post*, p. 142; "Importer" in sub-s. (2) of this section, *supra*, and "adulterated or impoverished" in sub-s. (7), *supra*.

(*a*) **"Conspicuously marked."**—The mark must be on the package itself (see s. 6 (1) of this Act, *post*, p. 122). Note, however, that this provision applies only to packages containing margarine or margarine-cheese, and that therefore packages containing any of the other articles to which this section applies need only be "conspicuously marked."

(*b*) **Label.**—In this one instance a label is sufficient and the receptacle itself need not be marked.

(*c*) **Defence of warranty.**—It is not quite clear whether a warranty is a defence to prosecutions under this section. See note (*b*) to s. 25 of the Act of 1875, *ante*, p. 69.

(*d*) **Penalty.**—By s. 17 (2), *post*, p. 129, the offender may also be imprisoned.

The penalties inflicted by some petty sessional courts for offences under the Sale of Food and Drugs Acts are altogether inadequate. See circular letter from the Home Office, dated July 24th, 1902, in the Appendix, *post*, p. 171.

(*e*) **Analysis of sample.**—Note that this is to be made by the Government, and not by the county or borough analysts.

(*f*) **"Sufficient evidence."**—*Cf.* s. 21 of the Act of 1875, and the cases cited thereunder.

Evidence for defence.—The certificate of any public analyst may be used by the defendant in his defence. See s. 22, *post*, p. 140.

(*g*) **"Injurious to health."**—*Cf.* the notes to s. 3 of the Act of 1875, *ante*, p. 4.

2. *Power for Local Government Board or Board of Agriculture to sample articles of food.*—(1) The Local Government Board may, in relation to any matter appearing to that Board to affect the general interest of the consumer, and the Board of Agriculture may, in relation to any matter appearing to that Board to affect the general interests of agriculture in the United Kingdom, direct an officer of the Board to procure for analysis samples of any article of food, and thereupon the officer shall have all the powers of procuring samples conferred by the Sale of Food and Drugs Acts (*a*), and those Acts shall apply as if the officer were an officer authorised to procure samples under the Sale of Food and Drugs Act, 1875, except that—

(a) the officer procuring the sample shall divide the same into four parts, and shall deal with three of such parts in the manner directed by section fourteen of the Sale of Food and Drugs Act, 1875 (*b*), as amended by this Act (*c*), and shall send the fourth part to the Board ; and

(b) the fee for analysis (*d*) shall be payable to the analyst by the local authority of the place where the sample is procured.

(2) The Board shall communicate the result of the analysis of any such sample to the local authority, and thereupon there shall be the like duty and power (*e*) on the part of the local authority to cause proceedings (*f*) to be taken as if the local authority had caused the analysis to be made.

Effect of section.—The practical effect of this and the succeeding section is to give the Local Government Board and the Board of Agriculture a roving commission to see that the

Acts are properly enforced throughout the kingdom. Prior to the passing of this Act, as the report of the select committee showed, the Acts were properly enforced in some districts and disregarded in others. The object of the legislature has evidently been to remove these differences as far as possible. See also notes (*a*) and (*b*) to s. 3, *infra*.

(*a*) **Power to procure samples.**—See s. 13 of the Act of 1875, s. 3 of the Act of 1879, and s. 10 of the Margarine Act, *ante*, pp. 44, 93, 110, and s. 14 of this Act, *post*, p. 128.

(*b*) *Ante*, p. 47.

(*c*) See s. 13, *post*, p. 128.

(*d*) **Fee for analysis.**—See ss. 12 and 13 of the Act of 1875, *ante*, pp. 43, 44.

(*e*) **Power of local authority.**—See s. 20 of the Act of 1875, *ante*, p. 60. The only "duty" cast upon a local authority to take proceedings is that created by s. 3 (1), *infra*.

(*f*) **Proceedings by local authority.**—In *Connor* v. *Butler*, [1902] 2 I. R. 569, the defendant was prosecuted by a local inspector, (1) under s. 17 of the Act of 1875, for refusing to sell to an officer of the Irish Agricultural Department; (2) under s. 6 of the Margarine Act, for exposing for sale unmarked margarine; and (3) under the same section, for selling margarine without a wrapper to the officer of the Agricultural Department. The facts were that an officer of the Irish Agricultural Department took a sample on November 12th, and caused it to be analysed. On December 4th the result of the analysis was communicated to the secretary of the local authority, who handed the certificate to the local inspector. The latter took out a summons on December 6th without any special authorisation from the local authority, whose next meeting was not until December 9th. At that meeting the inspector's action was approved. The magistrates dismissed the summons on the grounds that the local inspector was not entitled to prosecute, because he had not "caused the analysis to be made" (s. 20 of the Act of 1875, *ante*, p. 60), and because he was acting without authority. But the King's Bench Division in

Ireland held that the magistrates were wrong. Upon the summons for refusing to sell they held that any person, even a common informer, is entitled to take proceedings for that offence. Upon the other two summonses they held that the local inspector was entitled to take proceedings, notwithstanding the fact that he was not the person who had actually caused the analysis to be made, by reason of sub-s. (2) of this section ; and, further, that the fact that he had had no special authorisation to act was immaterial, and Lord O'Brien, C.J., said : "I think that the function of the local authority is adequately discharged if their secretary when he receives the certificate hands that document to the officer charged with the execution of the Act to proceed thereon in his own name." Madden and Kenny, JJ., expressed the opinion that the subsequent ratification by the local authority of their inspector's action was wholly unnecessary.

3. *Power for Local Government Board or Board of Agriculture to act in default of local authority.*—(1) It shall be the duty (*a*) of every local authority entrusted with the execution of the laws relating to the sale of food and drugs to appoint a public analyst, and put in force from time to time, as occasion may arise, the powers with which they are invested, so as to provide proper securities for the sale of food and drugs in a pure and genuine condition, and in particular to direct their officers to take samples for analysis.

(2) If the Local Government Board or Board of Agriculture, after communication with a local authority, are of opinion that the local authority have failed to execute or enforce any of the provisions of the Sale of Food and Drugs Acts in relation to any article of food, and that their failure affects the general interest of the consumer or the general interest of agriculture in the United Kingdom, as the case may be, the Board

concerned may (*b*), by order, empower an officer of the Board to execute and enforce those provisions or to procure the execution and enforcement thereof in relation to any article of food mentioned in the order.

(3) The expenses incurred by the Board or their officer under any such order shall be treated as expenses incurred by the local authority in the execution of the said Acts, and shall be paid by the local authority to the Board on demand, and in default the Board may recover the amount of the expenses with costs from the local authority.

(4) For the purposes of this section an order of the Board shall be conclusive in respect of any default, amount of expenses, or other matter therein stated or appearing.

(5) Any public analyst appointed under the Sale of Food and Drugs Acts shall furnish such proof of competency (*c*) as may from time to time be required by regulation framed by the Local Government Board (*d*).

(*a*) **Duty of local authority.**—This is the first time in the Sale of Food and Drugs Acts that a positive duty is cast upon local authorities to see to the proper execution of the Acts, and a remedy provided in case they make default. Prior to the passing of this Act there were no means of compelling a negligent local authority to do its duty.

(*b*) **Mandamus.**—In addition to the powers given to them by this section, the Local Government Board and the Board of Agriculture clearly have power to compel a local authority by *mandamus* to appoint an analyst (see *R.* v. *Leicester Guardians*, [1899] 2 Q. B. 632 ; 68 L. J. Q. B. 945 ; 81 L. T. 559). It seems doubtful, on the other hand, whether a *mandamus* would be granted to compel a local authority to perform any of the other duties cast upon it by this section, since an adequate

remedy seems to be provided by sub-s. (2). See *Passmore* v. *Oswaldtwistle Urban Council*, [1898] A. C. 387 ; 65 L. J. Q. B. 635 ; 78 L. T. 569 ; 62 J. P. 628.

(*c*) **Proof of competency.**—This is an addition to the provisions of s. 10 of the Act of 1875, *ante*, p. 40.

(*d*) **Regulation of Local Government Board.**—By Regulation dated March 7th, 1900, a public analyst is required to have competent knowledge of (a) Analytical chemistry ; (b) Therapeutics, and (c) Microscopy. See Appendix, *post*, p. 152. See also Circular Letter dated March 8th, 1900, from the Local Government Board to Clerks to Local Authorities. Appendix, *post*, p. 165.

4. *Power for Board of Agriculture to make regulations as to analysis of milk, cream, butter, or cheese.*—(1) The Board of Agriculture may, after such inquiry as they deem necessary, make regulations (*a*) for determining what deficiency in any of the normal constituents of genuine milk, cream, butter, or cheese, or what addition of extraneous matter or proportion of water, in any sample of milk (including condensed milk), cream, butter, or cheese, shall for the purposes of the Sale of Food and Drugs Acts raise a presumption (*b*), until the contrary is proved, that the milk, cream, butter, or cheese is not genuine or is injurious to health, and an analyst shall have regard to such regulations in certifying the result of an analysis (*c*) under those Acts.

(2) Any regulations made under this section shall be notified in the London and Edinburgh Gazettes, and shall also be made known in such other manner as the Board of Agriculture may direct.

(*a*) **Regulations of Board of Agriculture.**—By the Sale of Milk Regulations, 1901 (Appendix, *post*, p. 154), made under

this section, milk containing less than 3 per cent. of milk fat or less than 8·5 per cent. of non-fatty solids, and skimmed or separated milk (other than condensed milk), containing less than 9 per cent. of total milk solids, is to be presumed not to be genuine. These regulations have practically adopted a very elaborate report dated August 15th, 1893, made by Dr. Bell, C.B., F.R.S., the principal of the Government Laboratory. See also circular letter, dated December 28th, 1901, from the Board of Agriculture to clerks to local authorities, Appendix, *post*, p. 167.

By the Sale of Butter Regulations, 1902, Appendix, *post*, p. 158, butter containing more than 16 per cent. of water is to be presumed not to be genuine.

(*b*) **Presumption.**—Note that the fact that a sample of milk, etc., falls short of the standard is not conclusive evidence of adulteration, though there can be little doubt that in practice it will be found almost impossible to satisfy the court that milk, etc., which does not come up to the standard is genuine.

(*c*) **Form of certificate.** — For form of certificate and decisions thereon, see s. 18 of the Act of 1875, and schedule, *ante*, pp. 59, 87.

5. *Extension of Margarine Act*, 1887, *to margarine-cheese.*—The provisions of the Margarine Act, 1887, as amended by this Act (*a*), shall extend to margarine-cheese, and shall apply accordingly, with the substitution of "margarine-cheese" and "cheese" (*b*) for "margarine" and "butter," and provided that all margarine-cheese sold or dealt in otherwise than by retail shall either be inclosed in packages marked (*c*) in accordance with the Margarine Act, 1887, as amended by this Act, or be itself conspicuously branded with the words "margarine-cheese."

(*a*) See ss. 6—8, 10, 20 (4), *post*.

(*b*) For definitions, see s. 25, *post*, p. 141.

(*c*) See s. 6 of the Margarine Act, *ante*, p. 103, and s. 6 of this Act, *infra*.

6. *Marking of margarine and margarine-cheese.*—(1) Where under this Act or the Margarine Act, 1887, it is required that any package containing margarine or margarine-cheese shall be branded or marked (*a*), the brand or mark shall be on the package (*b*) itself and not solely on a label, ticket, or other thing attached thereto.

(2) The letters required to be printed on the paper wrapper in which margarine or margarine-cheese is sold shall be capital block letters not less than half an inch long (*c*) and distinctly legible, and no other printed matter (*d*) shall appear on the wrapper.

(3) The words "or with" (*e*) in section six of the Margarine Act, 1887, shall be repealed.

(*a*) **Branded or marked.**—See s. 6 of the Margarine Act and s. 1 (1), (5), of this Act, *ante*, pp. 103, 112, 113.

(*b*) **Package**,—*i.e.*, the package referred to in the first part of s. 6 of the Margarine Act. The latter part of that section dealing with the "paper wrapper" to be used in retail sales is not affected by this sub-section; but see sub-s. (2), *infra*.

(*c*) **Size of letters.**—Formerly by the repealed words of s. 6 of the Margarine Act, the letters were only required to be a quarter of an inch square.

(*d*) **Other printed matter.**—This enactment is due to the decisions in *Fife* v. *McLaughlin* (1893), 30 Sc. L. R. 899, and *World's Tea Co.* v. *Gardner* (1895), 59 J. P. 358, *ante*, p. 106, in which it was held that the word "margarine" might appear in the midst of other printed matter. The latter case also deals with other points which are not affected by this sub-section.

See note (*f*) to s. 6 of the Margarine Act, *ante*, p. 106, and note (*a*) to s. 7 of the same Act, *ante*, p. 107.

(*e*) **"Or with."**—*Ante*, p. 104.

7. *Provisions as to manufacturers of and dealers in margarine and margarine-cheese.*—(1) Every occupier of a manufactory of margarine or margarine-cheese, and every wholesale dealer in such substances, shall keep a register showing the quantity and destination of each consignment of such substances sent out from his manufactory or place of business, and this register shall be open to the inspection of any officer of the Board of Agriculture.

(2) Any officer of the Board of Agriculture shall have power to enter (*a*) at all reasonable times any manufactory of margarine or margarine-cheese, and to inspect any process of manufacture therein, and to take samples for analysis.

(3) If any such occupier or dealer—

(a) fails to keep such a register, or

(b) refuses to produce the register (*b*) when required to do so by an officer of the Board of Agriculture, or

(c) fails to keep the register posted up to date, or

(d) wilfully makes any entry in the register which is false in any particular, or

(e) fraudulently omits to enter any particular which ought to be entered in the register,

he shall be liable on summary conviction for the first offence to a fine not exceeding ten pounds, and for any subsequent offence to a fine not exceeding fifty pounds (*c*).

(4) The provisions of section nine of the Margarine Act, 1887 (*d*), relating to registration of manufactories shall extend to any premises wherein the business of a wholesale dealer in margarine or margarine-cheese is carried on.

(5) The registration of a manufactory or other premises shall be forthwith notified by the local authority to the Board of Agriculture.

(*a*) **Power of entry.**—The penalty for breach of this enactment is that imposed by s. 16, *post*, p. 128, for obstructing or impeding the officer in the execution of his duties.

(*b*) **Taking notes from register.**—The Court of Session in Scotland have held that the power to inspect the register carries with it the power to take notes therefrom, and that a margarine manufacturer who refuses to allow an officer of the Board of Agriculture to take notes from his register may be convicted of refusing to produce the register (*Hart* v. *Cohen and Van der Laan* (1902), 4 Fraser, 445 ; 39 Sc. L. R. 322).

(*c*) **Penalty.**—The court may also imprison for a second or subsequent offence ; see s. 17 (2), *post*, p. 129.

The penalties inflicted by some petty sessional courts for offences under the Sale of Food and Drugs Acts are wholly inadequate ; see Circular Letter from the Home Office to Clerks to Local Authorities, dated July 24th, 1902, Appendix, *post*, p. 171.

(*d*) *Ante*, p. 109.

8. *Restriction on amount of butter fat in margarine.*—It shall be unlawful to manufacture, sell, expose for sale, or import any margarine, the fat of which contains more than ten per cent. of butter fat (*a*), and every person who manufactures, sells, exposes for sale, or imports any margarine which contains more than that percentage, shall be guilty of an offence under the Margarine Act, 1887 (*b*), and any defence which would

be a defence under section seven of that Act (*c*) shall be a defence under this section, and the provisions of the former section shall apply accordingly.

Provided that nothing in this section shall apply to any margarine manufactured or imported in fulfilment of any contract made before the twentieth day of July one thousand eight hundred and ninety-nine.

(*a*) **Milk-blended butter.**—A mixture of butter and fresh milk is not "margarine" within the definition in s. 3 of the Margarine Act, and therefore may be sold, in spite of the provisions of this section, although it contains more than 10 per cent. of butter fat (*Bayley* v. *Pearks, Gunston, and Tee, Limited* (1902), 87 L. T. 67 ; 66 J. P. 790).

(*b*) See s. 4 of the Margarine Act, *ante*, p. 102, which also creates the penalty.

(*c*) **Defence of warranty.**—The only defence mentioned in s. 7 of the Margarine Act, *ante*, p. 107, is a defence that the article sold was purchased by the seller *as butter*, with a warranty or invoice to that effect. Therefore, it is apparently no defence to a prosecution under this section to allege that the article sold was purchased *as pure margarine*, with a warranty or invoice to that effect, although it might have been expected that such a defence would have been allowed to prevail.

9. *Provision as to name and address of person selling milk or cream in a public place.*—Every person who, himself or by his servant, in any highway or place of public resort sells milk or cream from a vehicle or from a can or other receptacle shall have conspicuously inscribed on the vehicle or receptacle (*a*) his name and address, and in default shall be liable on summary conviction to a fine (*b*) not exceeding two pounds.

(*a*) **Vehicle or receptacle.**—In *Crabtree* v. *Skelton* (1901), 70 L. J. K. B. 560, a milk-seller who was selling milk from

house to house, occasionally left his cart and walked from house to house with a can. His name and address were on the cart, but not on the can. He was prosecuted for an offence under this section. Lord Alverstone, C.J., and Lawrance, J., held, that if the sale was from the cart the name and address must be on the cart, but if from the can, then the name and address must be on the can.

(*b*) **Fine.**—This cannot be increased upon a second conviction ; see s. 17, *post*, p. 129.

10. *Division of samples taken in course of delivery or transit.* — In the case of a sample taken of milk in course of delivery (*a*), or of margarine or margarine-cheese forwarded by a public conveyance (*b*), the person taking the sample shall forward by registered parcel or otherwise a portion of the sample marked, and sealed, or fastened up, to the consignor if his name and address appear on the can or package containing the article sampled.

(*a*) **Milk in course of delivery.**—See s. 3 of the Act of 1879, *ante*, p. 93, and notes thereon.

(*b*) **Margarine forwarded by public conveyance.**—See s. 8 of the Margarine Act, *ante*, p. 108, and the notes thereon.

11. *Provisions as to condensed separated or skimmed milk.*—Every tin or other receptacle containing condensed separated or skimmed milk must bear a label clearly visible to the purchaser on which the words "Machine-skimmed Milk," or "Skimmed Milk," as the case may require, are printed in large and legible type, and if any person sells (*a*) or exposes or offers for sale condensed separated or skimmed milk in contravention

of this section he shall be liable (*b*) on summary conviction to a fine (*c*) not exceeding ten pounds.

(*a*) **Importer.** — The importer of condensed separated or skimmed milk in receptacles not labelled as above is also liable to a penalty ; see s. 1 of this Act, *ante*, p. 112.

(*b*) **Defence of warranty.**—It is not quite clear whether a warranty is a defence to a prosecution under this section ; see note (*b*) to s. 25 of the Act of 1875, *ante*, p. 69.

(*c*) **Fine.**—This cannot be increased upon a second conviction ; see s. 17, *post*, p. 129.

The penalties inflicted by some petty sessional courts for offences under the Sale of Food and Drugs Acts are altogether inadequate ; see Circular Letter from the Home Office to Clerks to Justices, dated July 24th, 1902, in the Appendix, *post*, p. 171.

12. *Notice of mixtures.*—The label referred to in section eight of the Sale of Food and Drugs Act, 1875 (*a*), shall not be deemed to be distinctly and legibly written or printed within the meaning of that section unless it is so written or printed that the notice of mixture given by the label is not obscured by other matter (*b*) on the label : Provided that nothing in this enactment shall hinder or affect the use of any registered trade mark, or of any label which has been continuously in use for at least seven years before the commencement of this Act ; but the Comptroller-General of Patents, Designs, and Trade Marks shall not register any trade mark purporting to describe a mixture unless it complies with the requirements of this enactment.

(*a*) *Ante*, p. 29.

(*b*) **Other matter.** — The section does not prohibit other matter entirely as in the case of the margarine label under s. 6 (2), *ante*.

13. *Amendment of 38 & 39 Vict. c. 63, as to samples.* —In section fourteen of the Sale of Food and Drugs Act, 1875, the words "offer to" (*a*) and the words "proceed accordingly and shall" (*a*) shall be repealed.

(*a*) *Ante*, p. 47.

14. *Taking samples in course of delivery.*—The provisions of section three and section four of the Sale of Food and Drugs Act Amendment Act, 1879 (*a*) (relating to the taking of samples of milk in course of delivery), shall apply to every other article of food (*b*): Provided that no samples shall be taken under this section except upon the request or with the consent of the purchaser or consignee (*c*).

(*a*) *Ante*, pp. 93, 97.

(*b*) **Food.**—For definition, see s. 26, *post*, p. 142.

(*c*) **Milk.**—This proviso does not apply to samples of milk. They are dealt with by s. 3 of the Act of 1879, which contains no such proviso.

15. *Amendment of 38 & 39 Vict. c. 63, as to registered parcels.*—In section sixteen of the Sale of Food and Drugs Act, 1875, the words "registered parcel" shall be substituted for the words "registered letter" (*a*).

(*a*) *Ante*, p. 54.

16. *Obstruction of officer in discharge of his duties.*—Any person who wilfully obstructs or impedes any

inspector or other officer in the course of his duties under the Sale of Food and Drugs Acts, or by any gratuity, bribe, promise, or other inducement prevents, or attempts to prevent, the due execution by such inspector or officer of his duty under those Acts, shall be liable, on summary conviction, for the first offence to a fine not exceeding twenty pounds, for the second offence to a fine not exceeding fifty pounds, and for any subsequent offence to a fine not exceeding one hundred pounds (*a*).

These provisions are supplementary to those of s. 17 of the Act of 1875, *ante*, p. 56, and s. 4 of the Act of 1879, *ante*, p. 97.

(*a*) **Penalty.**—He may also, under certain circumstances, be imprisoned. See s. 17, *infra*.

The penalties inflicted by some petty sessional courts for offences under the Sale of Food and Drugs Acts are wholly inadequate. See Circular Letter from the Home Office to Clerks to Justices, dated July 24th, 1902, in the Appendix, *post*, p. 171.

17. *Penalties for offences under the Sale of Food and Drugs Acts.*—(1) Where, under any provision of the Sale of Food and Drugs Act, 1875, a person guilty of an offence is liable to a fine (*a*) which may extend to twenty pounds as a maximum, he shall be liable for a second offence under the same provision to a fine not exceeding fifty pounds, and for any subsequent offence to a fine not exceeding one hundred pounds.

(2) Where, under any provision of the Sale of Food and Drugs Acts, a person guilty of an offence is liable to a fine (*a*) exceeding fifty pounds, and the offence, in the opinion of the court, was committed by the personal act, default, or culpable negligence of the person

accused (*b*), that person shall be liable (if the court is of opinion that a fine will not meet the circumstances of the case) to imprisonment, with or without hard labour, for a period not exceeding three months.

Application of section.—For the provisions to which this section applies, see ss. 6, 7, 9 and 27 of the Act of 1875, s. 4 of the Margarine Act, and ss. 1, 8, 16 and 20 of this Act.

(*a*) **Fine.**—The penalties inflicted by some petty sessional courts for offences under the Sale of Food and Drugs Acts are wholly inadequate. See Circular Letter from the Home Office to Clerks to Justices, dated July 24th, 1902, in the Appendix, *post*, p. 171.

(*b*) **Person accused.**—This sub-section apparently does not apply to a limited company. See *Pearks, Gunston and Tee, Limited* v. *Ward*, and *Hennen* v. *Southern Counties Dairies Co., Limited*, [1902] 2 K. B. 1 ; 71 L. J. K. B. 656 ; 87 L. T. 51 ; 66 J. P. 774.

18. *Articles sold in tins or packets.*—Notwithstanding anything in section seventeen of the Sale of Food and Drugs Act, 1875, where any article of food or drug is exposed for sale in an unopened tin or packet duly labelled, no person shall be required to sell it except in the unopened tin or packet in which it is contained.

This provision was inserted in consequence of a recommendation of the Select Committee of 1894—6, who called attention to the unfairness of asking for a portion of the contents of a properly labelled tin or package, and then instituting proceedings because no declaration of admixture was made.

19. *Time for proceeding and regulation as to summons.*—(1) When any article of food or drug has

been purchased from any person for test purposes, any prosecution under the Sale of Food and Drugs Acts in respect of the sale thereof, notwithstanding anything contained in section twenty of the Sale of Food and Drugs Act, 1875, shall not be instituted (*a*) after the expiration of twenty-eight days (*b*) from the time of the purchase.

(2) In any prosecution under the Sale of Food and Drugs Acts the summons shall state particulars (*c*) of the offence or offences alleged, and also the name of the prosecutor (*d*), and shall not be made returnable in less time than fourteen days (*e*) from the day on which it is served, and there must be served therewith a copy of any analyst's certificate (*f*) obtained on behalf of the prosecutor.

Time limit.—This section supersedes s. 10 of the Act of 1879. The time limit of twenty-eight days is now applied to proceedings in respect of all articles, and not of perishable articles alone, and the summons is made returnable in not less than fourteen days, instead of seven. The provision that the certificate of the prosecutor's analyst must accompany the summons, is also new. The cases decided under the repealed section are applicable *mutatis mutandis* to this.

(*a*) **Institution of prosecution.**—In *Cowling* v. *Taylor's Drug Co., Limited* (1901), 66 J. P. 11, the metropolitan police magistrate at the North London Police Court held that the prosecution is instituted at the time of service of the summons and not at the time of swearing the information. A decision to the contrary effect appears to have been given on April 22nd, 1903, by the magistrate at Clerkenwell Police Court. See 38 L. J. Newsp. 222. The point is a doubtful one, but it is submitted that the latter decision is correct. See *Rex* v. *Willace* (1797), at Durham Summer Assizes, and afterwards

before all the judges, quoted in 1 East's Pleas of the Crown, 186. There the prisoner was charged with a coining offence under the repealed statute 8 & 9 Will. 3, c. 26, which provided that every prosecution under the Act must be commenced within three months after the commission of the offence. The judges unanimously held that the information and proceeding before the magistrate was the commencement of the prosecution, and not the preferring of the indictment.

(*b*) **Twenty-eight days.**—The provision as to time is imperative, and is not waived by the appearance of the defendant under protest (see *Dixon* v. *Wells* (1890), 25 Q. B. D. 249; 59 L. J. M. C. 116; 62 L. T. 812; 38 W. R. 606; 54 J. P. 725; 17 Cox C. C. 48).

In the case of *Frew* v. *Morris* (1897), 24 Rettie (J.C.), 50: 34 Sc. L. R. 527, decided under the repealed section, the Court of Justiciary in Scotland held that in computing the period of twenty-eight days, the day on which the purchase took place is not to be taken into account; and that, therefore, when the sample was bought at 9 a.m., on November 4th, a summons served at 7.30 p.m. on December 2nd was in time. It is not clear whether this decision would be followed in England. At first sight it seems to strain in favour of the prosecution the language of a section obviously framed in favour of the defendant. See the reasoning of CHITTY, J., in *Re Railway Sleepers Supply Co.* (1885), 29 Ch. D. 204. But in *Radcliffe* v. *Bartholomew*, [1892] 1 Q. B. 161; 61 L. J. M. C. 63; 65 L. T. 677; 40 W. R. 63; 56 J. P. 262, a case under the Prevention of Cruelty to Animals Act, 1849 (12 & 13 Vict. c. 92), which provides that every complaint under the Act is to be made "within one calendar month after the cause of such complaint shall arise." WILLS and LAWRANCE, JJ., held that the day on which the offence was committed was to be excluded, and that an information laid on June 30th for an offence committed on May 30th was in time. It should be observed that in neither of the two last cases were the words the same as those of this section, and also

that the words of this section differ somewhat from those of the repealed section under which *Frew* v. *Morris* was decided. See also *McQueen* v. *Jackson* in note (*e*), *post*.

This time limit does not apply to prosecutions for giving a false warranty (*Cook* v. *White*, [1896] 1 Q. B. 284 ; 65 L. J. M. C. 46 ; 74 L. T. 53 ; 44 W. R. 409 ; 60 J. P. 330 ; 18 Cox C. C. 229). Such prosecutions are subject to the limitation of six months imposed by the Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43) (*Whitaker* v. *Pomfret Bros.*, [1902] 1 K. B. 661 ; 71 L. J. K. B. 353 ; 86 L. T. 420 ; 50 W. R. 398 ; 66 J. P. 408). In that case, on November 20th, 1900, a wholesale dealer sold pepper to a retailer with a false warranty. On May 16th, 1901, the retailer sold some of the pepper to an inspector, and was prosecuted under s. 6 of the Act of 1875. He pleaded the warranty and was discharged. On July 6th, 1901, the wholesale dealer was prosecuted for giving a false warranty. Lord ALVERSTONE, C.J., and DARLING and CHANNELL, JJ., held that the prosecution was out of time, since more than six months had elapsed since the warranty was given.

(*c*) **Particulars.**—The question what are sufficient particulars is one for the justices to decide, and where a defendant objects to the particulars of the offence as being insufficient, the right course for him to adopt would appear to be to ask for an adjournment in order that he may be better able to meet the charge. But since it is apparently in the absolute discretion of the justices to decide whether the particulars are sufficient, and whether they will grant the adjournment, it would appear improbable from the following cases that their ruling would be interfered with on an appeal to the High Court.

In *R.* v. *Wakefield* (1890), 54 J. P. 148, the defendant had been convicted of selling milk not of the nature, substance and quality demanded. On analysis, the milk was found to be mixed with water, but the summons did not give any particulars as to how the milk was adulterated, merely stating that the article demanded was new milk. The defendant did not ask for an adjournment, but contended that the statement of par-

ticulars of adulteration was a condition precedent to the prosecution, and that the justices had no jurisdiction to try the case. The rule, however, was discharged, and it was held that it was for the justices to decide whether the particulars were sufficient.

In *Barnes* v. *Rider* (1892), 62 L. J. M. C. 25; 68 L. T. 447; 57 J. P. 473; 17 Cox C. C. 623, which was also a prosecution for the adulteration of milk, the summons merely stated that the milk sold was not of the nature, substance, and quality demanded. The defendant objected that no particulars of the offence had been given, but the stipendiary magistrate overruled the objection and convicted him. The High Court (Pollock, B., and Hawkins, J.) decided that the summons was defective, and sent the case back to the magistrate with the expression of their opinion that he should have dismissed the summons.

In *Neal* v. *Devenish*, [1894] 1 Q. B. 544; 63 L. J. M. C. 78; 70 L. T. 628; 58 J. P. 246, which also dealt with the adulteration of milk, the decision in *R.* v. *Wakefield* was followed and approved, while *Barnes* v. *Rider* was expressly disapproved. The particulars of the offence were that the defendant had sold milk "adulterated contrary to s. 6 of the Sale of Food and Drugs Act, 1875." The defendant objected, as in the preceding case, that these particulars were insufficient, but the justices overruled the objection, and convicted him. The High Court (Mathew and Cave, JJ.) decided that the particulars were sufficient, and further that, even if they were not, it was for the justices to decide the point, and that the proper course for the defendant was to ask for an adjournment. Mathew, J., said: "We were referred to the case of *Barnes* v. *Rider* as supporting the appellant's contention; but that case seems to me to be entirely opposed to the earlier case of *R.* v. *Wakefield*."

In future it will probably be unnecessary to raise any such objections as are contained in the above cases, since the defendant will obtain all the information he is likely to want from the analyst's certificate, which must now be served with the summons.

(*d*) **Name of the prosecutor.**—In *Burns* v. *Williamson* (1897), 24 Rettie (J.C.), 58 ; 2 Adam, 308 ; 34 Sc. L. R. 670, a summons citing a person to answer a complaint "at the instance of the burgh prosecutor" without giving his name, was held to be bad under s. 10 of the Act of 1879.

(*e*) **Fourteen days.**—This means fourteen clear days. See *McQueen* v. *Jackson*, [1903] 2 K. B. 163 ; 72 L. J. K. B. 606 ; 88 L. T. 871, where the King's Bench Division held that a summons served on November 26th, and made returnable on December 10th, was bad.

The provision applies *mutatis mutandis* to Scotland, where a defender must not be cited on less than fourteen days *induciæ*. See *Dunlop* v. *Goudie* (1895), 22 Rettie (J.C.), 34 ; 1 Adam, 554.

(*f*) For provisions as to certificates obtained on behalf of defence, see s. 22, *post*, p. 140.

20. *Provisions as to use of warranty or invoice as defence, and proceedings against the warrantor.*—(1) A warranty or invoice (*a*) shall not be available as a defence to any proceeding under the Sale of Food and Drugs Acts unless the defendant has, within seven days after service of the summons, sent to the purchaser a copy of such warranty or invoice (*b*) with a written notice stating that he intends to rely on the warranty or invoice, and specifying the name and address of the person from whom he received it, and has also sent a like notice of his intention to such person.

(2) The person by whom such warranty or invoice is alleged to have been given shall be entitled to appear at the hearing and to give evidence, and the court may, if it thinks fit, adjourn the hearing to enable him to do so.

(3) A warranty or invoice given by a person resident outside the United Kingdom shall not be available as a defence to any proceeding under the Sale of Food

and Drugs Acts, unless the defendant proves that he had taken reasonable steps to ascertain and did in fact believe in the accuracy of the statement contained in the warranty or invoice.

(4) Where the defendant is a servant (*c*) of the person who purchased the article under a warranty or invoice he shall, subject to the provisions of this section, be entitled to rely on section twenty-five of the Sale of Food and Drugs Act, 1875 (*d*), and section seven of the Margarine Act, 1887 (*e*), in the same way as his employer or master would have been entitled to do if he had been the defendant, provided that the servant further proves that he had no reason to believe that the article was otherwise than that demanded by the prosecutor.

(5) Where the defendant in a prosecution under the Sale of Food and Drugs Acts has been discharged under the provisions of section twenty-five of the Sale of Food and Drugs Act, 1875, as amended by this Act, any proceedings under the Sale of Food and Drugs Acts (*f*) for giving the warranty relied on by the defendant in such prosecution, may be taken as well before a court having jurisdiction in the place (*g*) where the article of food or drug to which the warranty relates was purchased for analysis as before a court having jurisdiction in the place where the warranty was given.

(6) Every person who, in respect of an article of food or drug sold by him as principal or agent, gives to the purchaser a false warranty in writing (*h*), shall be liable on summary conviction (*i*), for the first offence, to a fine not exceeding twenty pounds, for the second offence to a fine not exceeding fifty pounds, and for any subsequent offence to a fine not exceeding one hundred

pounds (*k*), unless he proves to the satisfaction of the court that when he gave the warranty he had reason to believe that the statements or descriptions contained therein were true (*l*).

(*a*) **Warranty or invoice.**—It should be remembered that an invoice not amounting in law to a warranty is only available as a defence in margarine prosecutions. See notes to s. 25 of the Act of 1875 and to s. 7 of the Margarine Act, *ante*, pp. 68 and 107.

(*b*) **Copy of warranty.**—Apparently the actual words of the warranty need not be set out, provided its terms are distinctly stated. Thus, in *Irving* v. *Callow Park Dairy Co., Limited*, (1902), 66 J. P. 804 ; 87 L. T. 70, the defendants had entered into a contract for a periodical supply of milk to them by a farmer with a warranty of its purity. The contract and warranty were contained in a number of letters between the parties, and each can of milk was labelled "Warranted pure." On being prosecuted under s. 6 of the Act of 1875 the defendants gave notice that they relied upon a warranty, and sent a copy of the label on the cans, but did not disclose the correspondence. The King's Bench Division held that they had complied with the terms of this sub-section, and Lord ALVERSTONE, C.J., said : "What was intended by the terms of the section was that the prosecutor should know the terms of the warranty under which the defendant had bought . . . 'A copy of such warranty' . . . refers back to s. 25 of the Act of 1875, and means a copy of that which entitles the defendant to believe that the article was the same in nature, substance, and quality as that demanded by the prosecutor. Therefore, *primâ facie* that means a copy of the terms of the warranty on which the defendant bought, in order that the prosecution may know what the defence is going to be . . . A copy of the correspondence would not be half as useful as a copy of the terms of the warranty."

(*c*) **Servant.**—This sub-section was enacted because in *Hotchin* v. *Hindmarsh*, [1891] 2 Q. B. 181 ; 60 L. J. M. C. 146 ;

65 L. T. 149 ; 39 W. R. 607 ; 55 J. P. 775, Lord Coleridge, C.J., appears to have held that a servant who is prosecuted for selling an adulterated article is not protected by a warranty given to his master.

(*d*) *Ante*, p. 68.

(*e*) *Ante*, p. 107.

(*f*) See s. 27 of the Act of 1875, *ante*, p. 79, and sub-s. (6) of this section.

(*g*) **Venue of information.**—The object of this sub-section was to remove the inconvenience caused by the decision in *R.* v. *Smith*, [1896] 1 Q. B. 596 ; 65 L. J. M. C. 104 ; 74 L. T. 348 ; 44 W. R. 492 ; 60 J. P. 372 ; 18 Cox C. C. 307, where it was held that the giver of a false warranty must be prosecuted in the place where the warranty was given.

But the sub-section only applies if the warranty was given to the person from whom the article in question was purchased for analysis. Thus, in *Manners* v. *Tyler*, [1902] 1 K. B. 901 ; 71 L. J. K. B. 585 ; 86 L. T. 716 ; 50 W. R. 604, Manners, in Wiltshire, sold milk to A. in Middlesex with a false warranty. A. sold it unopened to B. in Middlesex with a further warranty. B. was prosecuted under s. 6 of the Act of 1875, set up the warranty from A., and was discharged. A. was then prosecuted in Middlesex for giving a false warranty, set up the warranty from Manners, and was discharged. Manners was then prosecuted in Middlesex for giving a false warranty, and objected that there was no jurisdiction. Lord Alverstone, C.J., and Darling and Channell, JJ., held that the objection was good ; and Channell, J., said that the defect pointed out in *R.* v. *Smith*, *supra*, was remedied by the present sub-section, but that "the legislature did not consider the case of successive warranties, and did not provide for them." Lord Alverstone, C.J., also pointed out that A. had really been discharged not under s. 25 of the Act of 1875, but under sub-s. (6) of this section, because his real defence was that when he gave the false warranty "he had reason to believe that the statements therein were true," and that he produced the warranty from Manners merely as evidence in support of that defence ; therefore sub-s. (3) of this section did not apply to the case at all.

(*h*) **Admissibility of analyst's certificate.**—In *R.* v. *Smith* and *Tyler* v. *Kingham*, *supra*, pp. 62, 63, it was held that the analyst's certificate given for the purpose of prosecuting the retail seller cannot be used as evidence against the wholesale dealer in a prosecution under this sub-section ; or, in other words, that the machinery of s. 21 of the Act of 1875, which makes the analyst's certificate "sufficient evidence of the facts therein stated," cannot be used in a prosecution for giving a false warranty. The effect of this is that in a prosecution under this sub-section, the analyst must be called to give oral evidence of the result of his analysis ; and, of course, evidence must also be forthcoming to show that the sample analysed formed part of the article in repect of which the false warranty was given.

(*i*) **Time limit.**—Prosecutions under this sub-section must be instituted within six months from the giving of the false warranty (*Whitaker* v. *Pomfret Brothers*, [1902] 1 K. B. 661 ; 71 L. J. K. B. 353 ; 86 L. T. 420 ; 50 W. R. 398 ; 66 J. P. 408).

(*k*) **Penalty.**—The defendant may also be imprisoned in certain circumstances ; see s. 17 of this Act, *ante*, p. 129.

The penalties inflicted by some petty sessional courts for offences under the Sale of Food and Drugs Acts are wholly inadequate ; see Circular Letter from the Home Office to Clerks to Justices, dated July 24th, 1902, in the Appendix, *post*, p. 171.

(*l*) **Scienter.**—In *Derbyshire* v. *Houliston*, [1897] 1 Q. B. 772 ; 66 L. J. Q. B. 569 ; 76 L. T. 624 ; 45 W. R. 527 ; 61 J. P. 374, it was held that a defendant could not be convicted of giving a false warranty unless he knew that the statements in the warranty were false. This sub-section goes a step further, and enacts that he shall not escape unless he had reason to believe that the statements were true.

21. *Duty of court to send article for analysis.*—The justices or court referred to in section twenty-two of the Sale of Food and Drugs Act, 1875, shall on the request of either party (*a*) under that section cause an

article of food or drug to be sent to the Commissioners of Inland Revenue for analysis, and may, if they think fit, do so without any such request.

(*a*) **Sending sample to Government Laboratory.**—The request of either party now renders it obligatory to send the sample to the Government Laboratory, whereas under s. 22 of the Act of 1875, the justices or court had a discretion in the matter. They have still that discretion where there is no request.

If the justices are requested to send the sample, but are unable to do so because it has been accidentally lost or destroyed, the defendant cannot be convicted (*Hutchison* v. *Stevenson* (1902), 4 Fraser (J.C.) 69 ; 3 Adam, 651 ; 39 Sc. L. R. 789).

22. *Provisions as to certificates of analysis.*—(1) At the hearing of the information in any proceeding under the Sale of Food and Drugs Acts, the production by the defendant of a certificate of analysis by a public analyst in the form prescribed in section eighteen of the Sale of Food and Drugs Act, 1875 (*a*), shall be sufficient evidence (*b*) of the facts therein stated, unless the prosecutor requires that the analyst be called as a witness.

(2) A copy of every such certificate shall be sent to the prosecutor at least three clear days before the return day, and if it be not so sent the court may, if it thinks fit, adjourn the hearing on such terms as may seem proper.

Application of section.—This section is complementary to s. 21 of the Act of 1875, *ante*, p. 62. There is, however, this difference between the two sections : this section applies to all proceedings under the Acts, whereas s. 21 of the Act of 1875 has been said to apply only to proceedings under s. 20 of that Act ; see note (*b*) to s. 21 of the Act of 1875, *ante*, p. 62.

(*a*) *Ante*, p. 59.

(*b*) **Sufficient evidence.**—Of course the certificate referred to in this section, like the certificate produced by the prosecution, is not conclusive. If certificates are produced on both sides the magistrates will have to determine which is the more reliable. See also note (*c*) to s. 21 of the Act of 1875, *ante*, p. 64.

23. *Transfer of powers from Secretary for Scotland to Local Government Board.*—This Act shall apply to Scotland with the substitution for "the Local Government Board" of "the Local Government Board for Scotland," and all powers and duties vested in or imposed on the Secretary for Scotland in relation to the Sale of Food and Drugs Acts shall be transferred to, vested in, or imposed on the Local Government Board for Scotland.

24. *Application to Ireland.*—This Act shall apply to Ireland with the substitution for "the Board of Agriculture" of "the Department of Agriculture and Technical Instruction for Ireland," and for "the Local Government Board" of "the Local Government Board for Ireland," and for "the London and Edinburgh Gazettes" of "the Dublin Gazette."

25. *Interpretation of terms.*—In this Act, unless the context otherwise requires—

The expression "margarine-cheese" means any substance, whether compound or otherwise, which is prepared in imitation of cheese, and which contains fat not derived from milk :

The expression "cheese" means the substance usually known as cheese, containing no fat derived otherwise than from milk :

The expression "local authority" means any local authority authorised to appoint an analyst for the purposes of the Sale of Food and Drugs Acts (*a*), and the expression "public analyst" means an analyst so appointed:

Other expressions have the same meaning as in the Sale of Food and Drugs Acts, and an offence under this Act shall be treated as an offence under those Acts (*b*).

(*a*) See s. 10 of the Act of 1875, *ante*, p. 40.

(*b*) It is not quite clear what the effect of these last words is: see the last paragraph of note (*b*) to s. 25 of the Act of 1875, *ante*, p. 70.

26. *Definition of "food."*—For the purposes of the Sale of Food and Drugs Acts the expression "food" shall include every article used for food (*a*) or drink by man, other than drugs or water (*b*), and any article which ordinarily enters into or is used in the composition or preparation of human food (*c*); and shall also include flavouring matters and condiments.

(*a*) **Used for food.**—Chewing gum is not an article used for food within the meaning of this section. In *Shortt* v. *Smith* (1895), 11 T. L. R. 325, the defendant was prosecuted for selling chewing gum adulterated with paraffin wax. It was not intended to be swallowed, but there was evidence that it might be swallowed accidentally, and if so, that it would be injurious to health. The justices held that it was not a food, and Cave and Wright, JJ., held that they were justified in so holding. In *Bennett* v. *Tyler* (1900), 81 L. T. 787; 64 J. P. 119; 19 Cox C. C. 434, the facts were similar, but the magistrates convicted. Channell and Bucknill, JJ., held that they were wrong.

(*b*) **"Water."**—By s. 70 of the Public Health Act, 1875 (38 & 39 Vict. c. 55), provision has been made for the analysis of water, including water likely to be used in the manufacture of drinks.

(*c*) **Extension of Definition.**—The addition of the words "and any article which ordinarily enters into or is used in the composition or preparation of human food," etc., is due to the decision in the case of *James* v. *Jones* (1894), 58 J. P. 230, in which it was held that baking powder made up of 20 per cent. of bicarbonate of soda, 40 per cent. of alum, and 40 per cent. of ground rice, was not an article of food within the meaning of the repealed section (s. 2 of the Act of 1875). The effect of this decision (see the judgment of the court delivered by Baron BRAMPTON, then HAWKINS, J.), was to narrow the scope of the Act very considerably. A similar decision had previously been given by the Recorder of Cambridge in *Warren* v. *Phillips* (1880), 44 J. P. 61. The Select Committee on Food Products Adulteration in 1896 noted these decisions with regret, and recommended the extension of the definition, which, as it now stands, is undoubtedly very wide.

27. *Repeal of Enactments in schedule.*—The enactments in the schedule to this Act are hereby repealed to the extent mentioned in the third column of that schedule.

28. *Short title and commencement.*—(1) This Act may be cited as the Sale of Food and Drugs Act, 1899, and the Sale of Food and Drugs Act, 1875, and the Sale of Food and Drugs Act Amendment Act, 1879, and the Margarine Act, 1887, and this Act may be cited collectively as the Sale of Food and Drugs Acts, 1875 to 1899, and are in this Act referred to as the Sale of Food and Drugs Acts.

(2) This Act shall come into operation (*a*) on the first day of January one thousand nine hundred.

(*a*) In *Batt* v. *Mattinson* (1900), 82 L. T. 800; 64 J. P. 615; 19 Cox C. C. 532, an offence under s. 6 of the Act of 1875 was committed on December 19th, 1899. On January 8th, 1900, a summons was issued, returnable on the 19th. RIDLEY and PHILLIMORE, JJ., held that the procedure was to be regulated by the Act of 1899, although the offence had been committed before the Act came into operation.

SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
38 & 39 Vict. c. 63	The Sale of Food and Drugs Act, 1875.	In section two, the definition of the term "food." In section fourteen, the words "offer to," and the words "proceed accordingly and shall." Section fifteen. In section twenty-seven, the words from "Every person who shall give a false warranty in writing" to "a penalty not exceeding twenty pounds."
42 & 43 Vict. c. 30	The Sale of Food and Drugs Act Amendment Act, 1879.	Section ten.
50 & 51 Vict. c. 29	The Margarine Act, 1887.	In section six, the words "or with," and the words "not less than a quarter of an inch square."
54 & 55 Vict. c. 46	The Post Office Act, 1891.	Section eleven.

APPENDIX.

ORDER AS TO REGISTRATION OF MARGARINE FACTORIES.

[22nd December, 1887.]

To the Owners and Occupiers for the time being of Manufactories of Margarine in England and Wales to which the Margarine Act, 1887, applies ;—

To the several Local Authorities under the said Act for the time being in England and Wales ;—

And to all others whom it may concern.

Whereas by section 9 of the Margarine Act, 1887 (which will come into operation on the 1st day of January, 1888), provision is made for the registration with the local authority of every manufactory of margarine (as defined by the said Act) in England and Wales from time to time in such manner as We, the Local Government Board, may direct ;

And whereas by section 13 of the said Act the expression "local authority" is defined as meaning "any local authority authorised to appoint a public analyst under the Sale of Food and Drugs Act, 1875," and the local authorities authorised to appoint a public analyst under the last-named Act are as follows, namely :—In the city of London and the liberties thereof the Commissioners of Sewers of the City of London and the liberties thereof, and in all other parts of the metropolis the vestries and district boards acting in execution of the Act for the better local management of the metropolis ; the court of quarter sessions for every county ; and the town

council of every borough having a separate court of quarter sessions, or having under any general or local Act of Parliament, or otherwise, a separate police establishment:

NOW, THEREFORE, We, the Local Government Board, hereby order and direct as follows:—

ARTICLE 1.—Every owner or occupier of a manufactory of margarine in England and Wales who shall make application to the proper local authority for a certificate of registration under the said Margarine Act, 1887, shall, in his application, state the following particulars:—

(a) The name and address of the owner or occupier making the application.
(b) The situation of the manufactory.
(c) The name and address, or names and addresses, of the owner or owners, or occupier or occupiers carrying on the manufacture.

Every such application shall be signed by the person making the same, or by some one acting on his behalf.

ARTICLE 2.—If the application is in due form, the local authority shall cause the manufactory to be registered by entering in a book the particulars of the application for registration; and thereupon a certificate, in the Form A. set forth in the Schedule hereto, shall be issued by the local authority to the person applying for the same.

ARTICLE 3.—Where any change occurs in the persons carrying on the manufacture, written notice thereof shall be given by the owner or occupier of the manufactory to the local authority, and the register shall thereupon be amended by making therein the requisite alteration, and an endorsement shall be made by the local authority on the certificate in accordance with the Form B. set forth in the said Schedule.

ARTICLE 4.—This Order shall come into operation on the First day of January, One thousand eight hundred and eighty-eight and shall remain in force until We shall otherwise direct.

SCHEDULE.

Form (A.)

Certificate under the Margarine Act, 1887.
(50 & 51 Vict. c. 29.)

This is to certify that the manufactory known as the situate at at which the manufacture of margarine is at present carried on by the owner [*or* occupier] thereof, has been duly registered by [*here insert the name of the local authority within whose District the manufactory is situate*] in accordance with the provisions of the Margarine Act, 1887, in that behalf, on the application of .

Dated this day of in the year One thousand eight hundred and eighty- .

Signed

Clerk to the [*here insert name of Local Authority*].

Form (B.)

Endorsement on Certificate in case of Change in Persons carrying on the Manufacture.

This is to certify that has been duly registered as the owner [*or* occupier] carrying on the manufacture of margarine in the within-named manufactory in the place of .

Dated this day of , in the year One thousand eight hundred and eighty- .

Signed

Clerk to the [*here insert name of Local Authority*].

Given under the Seal of Office of the Local Government Board, this Twenty-second day of December, in the year One thousand eight hundred and eighty-seven.

(L.S.)

Chas. T. Ritchie,
President.

Hugh Owen,
Secretary.

[See also the next Order, and circular letter of the Local Government Board dated 27th February, 1900, *post*, p. 164.]

ORDER AS TO REGISTRATION OF MARGARINE FACTORIES, ETC.

[26th February, 1900.]

To the OWNERS and OCCUPIERS for the time being of MANUFACTORIES of, and to the WHOLESALE DEALERS in, MARGARINE or MARGARINE-CHEESE in ENGLAND and WALES;—

To the several Local Authorities under the Margarine Act, 1887, and the Sale of Food and Drugs Act, 1899, for the time being in England and Wales;—

And to all others whom it may concern.

WHEREAS by section 9 of the Margarine Act, 1887 (hereinafter referred to as "the Act of 1887"), provision was made for the registration of every manufactory of margarine in England and Wales by the owner or occupier thereof with the local authority from time to time in such manner as We, the Local Government Board, might direct;

And whereas by an Order dated the 22nd day of December, 1887 (hereinafter referred to as "the Order of 1887"), We directed the manner of registration under the Act of 1887 of every such manufactory of margarine;

And whereas by section 5 of the Sale of Food and Drugs Act, 1899 (hereinafter referred to as "the Act of 1899"), it is enacted that the provisions of the Act of 1887, as amended by the Act of 1899, shall extend to margarine-cheese as defined by that Act, and shall apply accordingly with the substitution of "margarine-cheese" for "margarine";

And whereas by sub-section (4) of section 7 of the Act of 1899 it is enacted that the provisions of section 9 of the Act of 1887 relating to registration of manufactories shall extend to any premises wherein the business of a wholesale dealer in margarine or margarine-cheese is carried on:

NOW, THEREFORE, We, the Local Government Board, hereby order and direct as follows:

Article 1.—This Order shall come into operation forthwith, and shall remain in force until We shall otherwise direct; and the Order of 1887 is hereby rescinded:

Provided that in every case where a manufactory of margarine, or an owner or occupier carrying on the manufacture of margarine has been duly registered, and such registration has effect at the date of this Order, such registration shall, notwithstanding the rescission of the Order of 1887 but subject to the provisions of Article 4 of this Order, continue to have effect: Provided also, that any book which prior to the date of this Order has been used by a local authority in pursuance of the Order of 1887 for the purposes of registration shall, so far as such book contains any entry applicable to any such case as aforesaid, be deemed to be part of the register of the local authority for the purposes of this Order.

Article 2.—Every owner or occupier of a manufactory of and every wholesale dealer in margarine or margarine-cheese in England and Wales who shall make application to the proper local authority for a certificate of registration under the Act of 1887 and the Act of 1899, or under either of the said Acts, shall, in his application, state the following particulars:

(a) The name and address of the owner or occupier or wholesale dealer making the application.

(b) The situation of the manufactory, or of the premises wherein the business of the wholesale dealer is carried on.

(c) The name and address, or names and addresses, of the owner or owners, or occupier or occupiers, or wholesale dealer or dealers, carrying on the manufacture or the business.

Every such application shall be signed by the person making the same, or by someone acting on his behalf.

Article 3.—If the application is in due form, the local authority shall cause the manufactory, or the premises, as the case may be, to be registered by entering in a book the particulars of the application for registration; and thereupon a certificate, in the Form A. set forth in the Schedule hereto,

shall be issued by the local authority to the person applying for the same.

ARTICLE 4.—Where any change occurs in the persons carrying on the manufacture, or the business, written notice thereof shall be given by the owner or occupier of the manufactory, or by the wholesale dealer carrying on the business, to the local authority, and the register shall thereupon be amended by making therein the requisite alteration, and an endorsement shall be made by the local authority on the certificate in accordance with the Form B. set forth in the said Schedule.

SCHEDULE.

FORM A.

Certificate under the Margarine Act, 1887
(50 & 51 Vict. c. 29),
[*or*] [*and*]
[*the Sale of Food and Drugs Act*, 1899
(62 & 63 Vict. c. 51)].

This is to certify that the [manufactory *or* premises, *or both, as the circumstances require*] known as , situate at , at which the [manufacture of *or* business of a wholesale dealer in. *or both, as the circumstances require*], [margarine *or* margarine-cheese, *or both, as the circumstances require*] is [*or* are] at present carried on by [*name of the owner or occupier*] the [owner *or* occupier] thereof, has [*or* have] been duly registered by [*the name of the local authority within whose district the manufactory or premises is or are situate*] in accordance with the provisions of the [Margarine Act, 1887, *or* Sale of Food and Drugs Act, 1899, *or both, as the circumstances require*] in that behalf, on the application of [*name of applicant*].

Dated this day of , in the year One thousand nine hundred.

Signed

[Clerk to the [*here insert name of local authority*].

Form B.

Endorsement on Certificate in case of change in persons carrying on the manufacture or business.

This is to certify that has been duly registered as the [owner *or* occupier] carrying on the [manufacture of *or* business of a wholesale dealer in, *or both, as the circumstances require*] [margarine *or* margarine-cheese, *or both, as the circumstances require*] in the within-named [manufactory *or* premises, *or both, as the circumstances require*] in the place of .

Dated this day of , in the year One thousand nine hundred.

Signed

Clerk to the [*here insert name of local authority*].

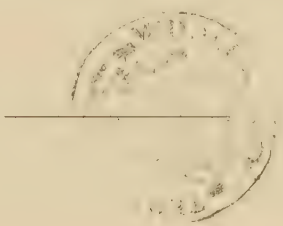
Given under the Seal of Office of the Local Government Board, this Twenty-sixth day of February, in the year One thousand nine hundred.

(L.S.)

Henry Chaplin,
President.

S. B. Provis,
Secretary.

[See also Circular Letter of the Local Government Board, dated February 27th, 1900, *post*, p. 164.]



REGULATION AS TO COMPETENCY OF ANALYST.

[7th March, 1900.]

To the several LOCAL AUTHORITIES for the time being required by law to appoint a Public Analyst:

And to all others whom it may concern.

WHEREAS by the Sale of Food and Drugs Acts provision is made for the appointment by certain local authorities of persons to act as analysts of all articles of food and drugs, and every such appointment is made subject to the approval of the Local Government Board;

And whereas by sub-sections (1) and (5) of section 3 of the Sale of Food and Drugs Act, 1899 (hereinafter referred to as "the Act"), it is enacted as follows:—

"(1) It shall be the duty of every local authority entrusted with the execution of the laws relating to the sale of food and drugs to appoint a public analyst . . ."

"(5) Any public analyst appointed under the Sale of Food and Drugs Acts shall furnish such proof of competency as may from time to time be required by regulation framed by the Local Government Board."

And whereas by section 25 of the Act it is enacted as follows:—

"In this Act unless the context otherwise requires—

. . . . .

"The expression 'local authority' means any local authority authorised to appoint an analyst for the purposes of the Sale of Food and Drugs Acts, and the expression 'public analyst' means an analyst so appointed."

NOW THEREFORE, We, the Local Government Board, in pursuance of the powers given to Us by sub-section (5) of section 3 of the Act, do hereby order that the following regulation shall have effect; that is to say,—

Every person appointed on or after the first day of January, one thousand nine hundred, to the office of public analyst shall

furnish such proof (*a*) as We may deem sufficient of his competent skill in and knowledge of (a) analytical chemistry, (b) therapeutics, and (c) microscopy.

Such proof shall in every case comprise documentary evidence (*a*) that such person holds the requisite certificate, diploma, licence, or document conferring the qualification or attesting his possession of the skill or knowledge to which the same applies, and granted or issued by any person or body of persons for the time being recognised by Us as competent to confer such qualification or to test such skill or knowledge. Such proof shall also comprise such further evidence as We may in any particular case require.

All such documentary evidence as is hereinbefore mentioned shall be furnished by such person to the local authority by whom he is appointed and shall be transmitted to Us by the local authority when applying for Our approval of the appointment:

Provided that nothing in this Regulation contained shall, in the case of any person who was appointed to the office of public analyst with Our approval between the first day of January, one thousand eight hundred and ninety-one, and the date hereof, or of any person who is so appointed for the first time after such last-mentioned date, apply upon any subsequent appointment of such person to the said office.

Given under the Seal of Office of the Local Government Board, this Seventh day of March, in the year One thousand nine hundred.

(L.S.)

Henry Chaplin,
President.

S. B. Provis,
Secretary.

(*a*) **Proof of skill—documentary evidence.**—For further information as to these, see Circular Letter from the Local Government Board, dated March 8th, 1900, *post*, p. 165.

SALE OF MILK REGULATIONS, 1901.(*a*)

The Board of Agriculture, in exercise of the powers conferred on them by section 4 of the Sale of Food and Drugs Act, 1899, do hereby make the following Regulations :—

MILK.

1. Where a sample of milk (not being milk sold as skimmed, or separated, or condensed, milk) contains less than 3 per cent. of milk-fat, it shall be presumed (*b*) for the purposes of the Sale of Food and Drugs Acts, 1875 to 1899, until the contrary is proved, that the milk is not genuine, by reason of the abstraction therefrom of milk-fat, or the addition thereto of water.

2. Where a sample of milk (not being milk sold as skimmed, or separated, or condensed, milk) contains less than 8·5 per cent. of milk-solids other than milk-fat, it shall be presumed (*b*) for the purposes of the Sale of Food and Drugs Acts, 1875 to 1899, until the contrary is proved, that the milk is not genuine, by reason of the abstraction therefrom of milk-solids other than milk-fat, or the addition thereto of water.

SKIMMED OR SEPARATED MILK.

3. Where a sample of skimmed or separated milk (not being condensed milk) contains less than 9 per cent. of milk-solids, it shall be presumed (*b*) for the purposes of the Sale of Food and Drugs Acts, 1875 to 1899, until the contrary is proved, that the milk is not genuine, by reason of the abstraction therefrom of milk-solids other than milk-fat, or the addition thereto of water.

EXTENT.

4. These Regulations shall extend to Great Britain.

COMMENCEMENT.

5. These Regulations shall come into operation on the first day of September, one thousand nine hundred and one.

SHORT TITLE.

6. These Regulations may be cited as the Sale of Milk Regulations, 1901.

In witness whereof the Board of Agriculture have hereunto set their Official Seal this fifth day of August, One thousand nine hundred and one.

(L.S.)

T. H. ELLIOTT,
Secretary.

[See also Circular Letter of the Board of Agriculture, dated December 28th, 1901, *post*, p. 167.]

(*a*) For an explanation of, and remarks upon, these Regulations, see Circular Letter from the Board of Agriculture, dated 28th December, 1901, *post*, p. 167.

(*b*) **Presumptions.**—These are of course capable of being rebutted. Milk below the standard is not necessarily adulterated, and milk above the standard is not necessarily genuine. See p. 21, *ante*, and remarks in Circular Letter from the Board of Agriculture, dated 28th December, 1901, *post*, p. 168.

SALE OF MILK (IRELAND) REGULATIONS, 1901. (*a*)

The Department of Agriculture and Technical Instruction for Ireland in exercise of the powers conferred on them by sections 4 and 24 of the Sale of Food and Drugs Act, 1899, do hereby make the following Regulations :—

MILK.

1. Where a sample of milk (not being milk sold as skimmed, or separated, or condensed, milk) contains less than 3 per cent. of milk-fat, it shall be presumed (*b*) for the purposes of the Sale of Food and Drugs Acts, 1875 to 1899, until the contrary is proved, that the milk is not genuine, by reason of the abstraction therefrom of milk-fat, or the addition thereto of water.

2. Where a sample of milk (not being milk sold as skimmed, or separated, or condensed, milk) contains less than 8·5 per cent. of milk-solids other than milk-fat, it shall be presumed (*b*) for the purposes of the Sale of Food and Drugs Acts, 1875 to 1899, until the contrary is proved, that the milk is not genuine by reason of the abstraction therefrom of milk-solids other than milk-fat, or the addition thereto of water.

SKIMMED OR SEPARATED MILK.

3. Where a sample of skimmed or separated milk (not being condensed milk) contains less than 9 per cent. of milk-solids, it shall be presumed (*b*) for the purposes of the Sale of Food and Drugs Acts, 1875 to 1899, until the contrary is proved, that the milk is not genuine, by reason of the abstraction therefrom of milk-solids other than milk-fat, or the addition thereto of water.

EXTENT.

4. These Regulations shall extend to Ireland.

Commencement.

5. These Regulations shall come into operation on the First day of September One thousand nine hundred and one.

Short Title.

6. These Regulations may be cited as the Sale of Milk (Ireland) Regulations, 1901.

In witness whereof the Department of Agriculture and Technical Instruction for Ireland have hereunto set their Official Seal this Second day of August One thousand nine hundred and one.

(L.S.)

T. P. Gill,
Secretary.

(*a*) See note (*a*) on p. 155, *ante*.
(*b*) See note (*b*) on p. 155, *ante*.

SALE OF BUTTER REGULATIONS, 1902.

The Board of Agriculture, in exercise of the powers conferred on them by section 4 of the Sale of Food and Drugs Act, 1899, do hereby make the following Regulations :—

1. Where the proportion of water in a sample of butter exceeds 15 per cent., it shall be presumed (*a*) for the purposes of the Sale of Food and Drugs Acts, 1875 to 1899, until the contrary is proved, that the butter is not genuine by reason of the excessive amount of water therein.

2. These Regulations extend to Great Britain.

3. These Regulations shall come into operation on the Fifteenth day of May One thousand nine hundred and two.

4. These Regulations may be cited as the Sale of Butter Regulations, 1902.

In witness whereof the Board of Agriculture have hereunto set their Official Seal this Twenty-second day of April One thousand nine hundred and two.

(L.S.)

T. H. ELLIOTT,
Secretary.

(*a*) **Presumption.**—See note (*b*) on p. 155, *ante*.

SALE OF BUTTER (IRELAND) REGULATIONS, 1902.

The Department of Agriculture and Technical Instruction for Ireland, in exercise of the powers conferred on them by sections 4 and 24 of the Sale of Food and Drugs Act, 1899, do hereby make the following Regulations :—

Butter.

1. Where the proportion of water in a sample of butter exceeds 16 per cent., it shall be presumed (*a*) for the purposes of the Sale of Food and Drugs Acts, 1875 to 1899, until the contrary is proved, that the butter is not genuine by reason of the excessive amount of water therein.

Extent.

2. These Regulations shall extend to Ireland.

Commencement.

3. These Regulations shall come into operation on the Fifteenth day of May One thousand nine hundred and two.

Short Title.

4. These Regulations may be cited as the Sale of Butter (Ireland) Regulations, 1902.

In witness whereof the Department of Agriculture and Technical Instruction for Ireland have hereunto set their Official Seal this Twenty-third day of April One thousand nine hundred and two.

(L.S.)

T. P. Gill,
Secretary.

(*a*) **Presumption.**—See note (*b*) on p. 155, *ante*.

Specimen Form.] FORM OF ANALYST'S QUARTERLY REPORT.

SALE OF FOOD AND DRUGS ACT, 1875.

Report of the Public Analyst appointed for the ——— of ———, upon the articles analysed by him under the above Act, during the quarter ending the ———.

Article submitted for analysis.	State whether the sample was submitted to the analyst by an officer acting under direction of a Local Authority, under section 13 of Act, and if so, the name of such authority.	Result of analysis; showing whether the sample was genuine or adulterated: and if adulterated, what were the nature and extent of the adulteration.	The sum paid in respect of the analysis.	Observations.

Total number of samples analysed during the quarter - - - - - - -
Number adulterated - - - - - - - - - - - - - -

(Signed) ———————————
Public Analyst.

(Date) ———————————

[See also Circular Letter of the Local Government Board, dated January 1st, 1879, *post*, p. 161.]

CIRCULARS TO CLERKS TO LOCAL AUTHORITIES UNDER THE SALE OF FOOD AND DRUGS ACTS, 1875 TO 1899.

ANALYSTS' REPORTS.

Local Government Board,
1*st January*, 1879.

Sir,—I am directed by the Local Government Board to call your attention to section 19 of the Sale of Food and Drugs Act, 1875, and to remind you that a copy of the reports made by public analysts for the several quarters of the year 1878 should be forwarded to the Board in the course of the present month.

I am to observe that, in some of the reports hitherto received, the Board find that analysts have given certain details of the analyses made, but have omitted to state which samples are, in their opinion, to be classed as genuine, and which as adulterated.

I am to refer to the enclosed specimen copy of the form in which the Board are desirous that the quarterly reports should be made, and which provides for showing—

(1) The description of article submitted for analysis ;
(2) Whether or not the sample was submitted to the analyst by an officer acting under direction of a local authority, under section 13 of the Act ;
(3) *Whether the sample was genuine or adulterated*, and, if adulterated, what were the nature and extent of the adulteration ;
(4) The sum paid in respect of the analysis ;
(5) The observations, if any, which the analyst may wish to make in reference to the analysis ;

and I am to state that the Board would be glad if this information were in future given with regard to each sample analysed.

I am to add that it would be convenient, for statistical purposes, if the quarterly reports were uniformly made up to the

last day of March, June, September, and December respectively.

A copy of so much of the Board's annual report for 1877—1878, as relates to the reports of public analysts for the year 1877, with a numerical abstract of those reports, is enclosed for the information of the authority.

I am, Sir, your obedient Servant,

JOHN LAMBERT,

Secretary.

DIRECTIONS AS TO TAKING SAMPLES.

LOCAL GOVERNMENT BOARD,
Whitehall, S.W.,
26th February, 1894.

SIR,—I am directed by the Local Government Board to state that they have received from the Commissioners of Inland Revenue a communication with reference to the portions of samples forwarded to the chemical officers of their department under the 22nd section of the Sale of Food and Drugs Act, 1875, from which it appears that in some instances the quantities have been so small as to cause difficulties in the operations of analysis; that in others the packing has been defective; and that in certain instances, in the case of perishable articles, there has been what has seemed an unnecessarily long interval between the original purchase and the receipt of the sample at Somerset House.

The insufficiency referred to is doubtless generally due to the smallness of the sample purchased under Section 13 of the Act, but also, occasionally, to the fact that the parts into which, under section 14, the sample is divided are not made equal.

The chemical officers of the Inland Revenue suggest that the following rules should be observed in this matter:

1. The quantities of the samples purchased under section 13 should not be less, in the case of milk (*a*) than 1 pint; butter (*b*), $\frac{3}{4}$ of a lb.; lard, $\frac{3}{4}$ of a lb.; coffee, $\frac{3}{4}$ of a lb.; spirits, $\frac{3}{4}$ of a pint.

2. The division under section 14 should be made as nearly equally as possible, so that the portion reserved may be not less than one-third of the whole.
3. The reserved portion of such samples as butter (*b*) and lard should, as soon after purchase as possible, be placed, without paper (since paper acts as an absorbent), in a dry, wide-mouthed stoppered bottle or in an earthenware jar, securely corked so as to exclude the air.
4. The bottle used for the reserved portion of milk (*a*) should be of such capacity that the milk may nearly fill it. (The use of bottles much too large for the quantity is apt to result in such a churning, if the samples are sent by railway, as to cause the separation of the fat.)
5. The corks used should be new and sound.

The Board request that the officers by whom samples are obtained for analysis may be instructed to have regard to these rules.

I am also to suggest that the officers referred to should be impressed with the importance of securing the utmost promptitude, both as regards the transmission of samples to the public analysts immediately after purchase, and as regards the subsequent stages of the case where legal proceedings are taken. It might be well, too, that the attention of the public analyst should be called to the desirability of completing his analyses as soon as practicable after receipt of the articles sent to him.

I am at the same time to state that the Board have received from the Commissioners of Inland Revenue a report (*c*) from their chief chemical officer showing the results of certain investigations made by him with regard to the composition of milk ; and I am to request that you will have the goodness to forward to the public analyst one of the copies of that report (*c*) which are herewith enclosed.

I am, Sir, your obedient Servant,

Hugh Owen,

Secretary.

(*a*) **Milk.**—Further directions for taking samples of milk will be found in Circular Letters of the Board of Agriculture

dated 28th December, 1901, *post*, p. 167, and 17th August, 1903, *post*, p. 174.

(*b*) **Butter.**—Further directions for taking samples of butter will be found in a Circular Letter of the Board of Agriculture, dated 13th July, 1903, *post*, p. 172.

(*c*) **Report of chief chemical officer.**—This was a report by Dr. J. Bell, C.B., F.R.S., containing an elaborate investigation into the composition of the milk of 273 cows and the mixed milk of 55 dairies. Its result was to show that nearly the whole of the milk investigated came up to or exceeded the standard which has since been adopted by the Sale of Milk Regulations, 1901 (*ante*, p. 154). It is therefore deemed unnecessary to set out the report in full.

REGISTRATION OF MANUFACTORIES OF MARGARINE AND MARGARINE-CHEESE.

LOCAL GOVERNMENT BOARD,
Whitehall, S.W.,
27*th February*, 1900.

SIR,—I am directed by the Local Government Board to advert to their order dated the 22nd day of December, 1887, issued under section 9 of the Margarine Act, 1887, directing the manner of registration of every manufactory of margarine in England and Wales by the owner or occupier thereof with the local authority.

In view of the Sale of Food and Drugs Act, 1899, which extends the provisions of the Margarine Act, 1887, as amended by that Act, to margarine-cheese and to the registration of premises wherein the business of a wholesale dealer in margarine or margarine-cheese is carried on, the Board have deemed it expedient to rescind the order above-mentioned and to issue a fresh order, directing the manner of registration of manufactories of margarine or margarine-cheese, and of premises wherein the business of a wholesale dealer in margarine or margarine-cheese is carried on.

The new order provides that where a manufactory of margarine, or an owner or occupier carrying on the manufacture of margarine, has been duly registered, and the registration has effect at the date of the order, the registration shall, subject to the provisions of Article 4 of the order, continue in force.

Copies of the order are enclosed.

I am, Sir, your obedient Servant,

S. B. PROVIS,

Secretary.

The Clerk to the Local Authority.

PUBLIC ANALYSTS: REGULATION AS TO COMPETENCY.

LOCAL GOVERNMENT BOARD,
Whitehall, S.W.,
8th March, 1900.

SIR,—I am directed by the Local Government Board to draw attention to the provisions of sub-sections (1) and (5) of section 3 of the Sale of Food and Drugs Act, 1899 (62 & 63 Vict. c. 51). The former sub-section provides that it shall be the duty of every local authority entrusted with the execution of the laws relating to the sale of food and drugs to appoint a public analyst, and the latter that any public analyst appointed under the Sale of Food and Drugs Acts shall furnish such proof of competency as may from time to time be required by regulation framed by the Board.

The Board have issued an Order, of which two copies are enclosed, prescribing the regulation which they have framed under the above enactment.

It will be observed that the regulation requires that every person appointed on or after the First day of January, 1900, to the office of public analyst shall furnish such proof as the Board may deem sufficient of his competent skill in and knowledge of (a) analytical chemistry, (b) therapeutics, and (c) microscopy; and the Order proceeds to indicate the nature

of the documentary evidence to be comprised in such proof Such evidence of competency is to be furnished by the public analyst to the local authority by whom he is appointed : and it is to be transmitted to the Board by that authority when applying for the Board's approval of the appointment.

In the case, however, of any person who was appointed to the office of public analyst with the approval of the Board between 1st January, 1891, and the date of the Order, or who is appointed to that office for the first time after the last-mentioned date, the regulation will not apply in the event of his subsequent appointment as public analyst.

As regards the reference in the Order to a person or body of persons whom the Board may from time to time recognise as competent to confer the requisite qualification or to test the skill or knowledge of which proof is required by the Order, the Board may state that it would accord with their existing practice to accept as sufficient documentary evidence of the requisite qualification under the Acts, the diploma of fellowship or associateship of the Institute of Chemistry of Great Britain and Ireland, together with the certificate granted by the Institute after an examination, conducted by them on lines approved by the Board, in therapeutics, pharmacology, and microscopy.

The possession of a diploma as a registered medical practitioner is accepted as sufficient proof of competency in microscopy and therapeutics, and it would only be necessary that a medical practitioner appointed as a public analyst should furnish evidence of competent skill in and knowledge of analytical chemistry.

Evidence of skill or knowledge on the part of a candidate in respect of any of the qualifications referred to as requisite, which is tendered by an individual, must be from a person recognised as entitled to speak with authority as to proficiency in the particular qualification in question.

The term "local authority" is used in the Order with the meaning assigned to it by section 25 of the Sale of Food and Drugs Act, 1899, that is to say : "Any local authority autho-

rised to appoint an analyst for the purposes of the Sale of Food and Drugs Acts." The section also provides that "the expression 'public analyst' means an analyst so appointed."

I am, Sir, your obedient Servant,

S. B. Provis,

The Clerk to the Local Authority. *Secretary.*

SALE OF MILK REGULATIONS.

Board of Agriculture,
4, Whitehall Place, London, S.W.,
28*th December*, 1901.

Sale of Food and Drugs Act, 1899.
(62 & 63 Vict. c. 51.)

Sir,—I am directed by the Board of Agriculture to bring under the notice of your local authority the following observations with reference to the Regulations relating to the sale of milk in Great Britain, which, in pursuance of the powers conferred upon the Board by section 4 of the Sale of Food and Drugs Act, 1899, were made by the Board on the 5th August, and came into operation on the 1st September, 1901.

The Regulations were as follows :—

Milk.

1. Where a sample of milk (not being milk sold as skimmed, or separated, or condensed, milk) contains less than 3 per cent. of milk-fat, it shall be presumed for the purposes of the Sale of Food and Drugs Acts, 1875 to 1899, until the contrary is proved, that the milk is not genuine, by reason of the abstraction therefrom of milk-fat, or the addition thereto of water.

2. Where a sample of milk (not being milk sold as skimmed, or separated, or condensed, milk) contains less than 8·5 per cent.

of milk-solids other than milk-fat, it shall be presumed for the purposes of the Sale of Food and Drugs Act, 1875 to 1899, until the contrary is proved, that the milk is not genuine, by reason of the abstraction therefrom of milk-solids other than milk-fat, or the addition thereto of water.

SKIMMED OR SEPARATED MILK.

3. Where a sample of skimmed or separated milk (not being condensed milk) contains less than 9 per cent. of milk-solids, it shall be presumed for the purposes of the Sale of Food and Drugs Acts, 1875 to 1899, until the contrary is proved, that the milk is not genuine, by reason of the abstraction therefrom of milk-solids other than milk-fat, or the addition thereto of water.

In the Regulations the limits below which a presumption is raised that the milk is not genuine were necessarily fixed at figures lower than those which are usually afforded by genuine milk, in which the proportion of milk-fat and non-fatty solids very frequently exceeds the percentages specified above. It is therefore important that local authorities should keep steadily in view the possibility of the artificial reduction of the quality of natural milk to the official limits by the abstraction of cream, or the addition of separated milk, or of water, and arrangements should be made for the taking of samples and the submission of the same for analysis whenever the existence of malpractices of the kind is suspected. In this connection, it may be observed that the evidence given before the Milk Regulations Committee [Cd. 491], tended to show that the practice of fraudulently mixing separated milk with new milk has become increasingly prevalent, particularly in some of the larger towns.

Although the quality of genuine milk offered for sale will usually be well above the official limits of milk-fat and non-fatty solids, there may occasionally, and especially in certain seasons of the year, be cases in which a sample of genuine milk may fall below those limits. To meet cases of this kind it is suggested that in the absence of any special circumstances indicating that the case is a fraudulent one, the local authority

might, in the first instance, call the vendor's attention to the analyst's report, and ask him whether he desires to offer any explanation, and if the explanation is one they are able to accept, they might, in the exercise of their discretion, refrain from the institution of proceedings or withdraw any summons which, in order to prevent the failure of proceedings, by reason of the time-limit imposed by the Act, it may have been necessary to take out. But it may be desirable that further samples of milk should be taken in such cases, in order that a satisfactory conclusion as to the character of the milk supplied may be arrived at.

Cream.

The Milk Regulations Committee reported that the evidence submitted to them went to show that it was a common practice to add gelatin to cream for the purpose of giving it a fictitious appearance of richness or thickness. Local authorities are urged to take steps to ascertain whether this form of adulteration is practised within their districts, and if a public analyst reports the presence of gelatin or other similar substance in a sample of cream, the local authority concerned should consider whether the case is one in which proceedings might not with advantage be instituted under section 6 of the Sale of Food and Drugs Act, 1875.

Collection and Retention of Samples.

It is desirable that, so far as may be found practicable, there should be uniformity of procedure in collecting and retaining samples of milk procured under the provisions of the Sale of Food and Drugs Acts, and the following recommendations have been drawn up for the guidance of the local officials employed in this work :—

(1) The quantity to be purchased should not be less than one pint, except that it may be expedient to purchase only half-a-pint in cases where there is reason to believe that the object of the purchase would be defeated if a greater quantity were demanded.

(2) The division of the sample under section 14 of the Act of 1875, as amended by section 13 of the Act of 1899,

should be made as equally as possible, so that the portion reserved by the purchaser may be not less than one-third of the whole.

(3) The bottle used for each divided part should have a narrow neck, and be of such capacity that the milk may nearly or quite fill it. The shape of bottle known as "Winchester" is strongly recommended, but in any case the bottles should have rounded sides in order to give security to the sample during transit by post or otherwise.

(4) Corks only should be used; and these should always be new and sound, and fitting so tightly as to secure the contents without any aid from the wax which is subsequently used for sealing the sample. It is most desirable that the sealing should be carried out in such a way as to prevent any attempt to remove the cork. It is therefore recommended that the cork should be slit down to one-fourth of its length and the string drawn through and securely fastened round the neck, the ends being afterwards carried to the top of the cork and sealed thereon.

(5) Special attention should be given that the reserved portion of milk be kept in as equable and cool a temperature as possible, pending its production in court in instances where proceedings are taken; and, if directed by the justices to be referred to the Government laboratory, it should be carefully packed so as to secure its safe transmission.

The Board would be obliged if you would take steps to bring this circular under the notice of your local authority, and they will be glad to forward you additional copies for distribution amongst the members of your local authority and the officers concerned, upon being informed of the number you require.

I am, Sir, your obedient Servant,

T. H. ELLIOTT,
Secretary.

INADEQUATE PENALTIES.

Home Office,
24*th July*, 1902.

Sir,—I am directed by the Secretary of State to inform you that a local authority charged with the enforcement of the provisions of the Sale of Food and Drugs Acts has recently called his attention to the inadequate penalties imposed for breaches of these Statutes, and has represented that the efforts made to suppress the abuses against which the Acts are aimed are thereby greatly impeded. This representation is by no means the first of the kind which has been made to the Home Office, and the Secretary of State is informed by the Local Government Board that they have from time to time received many similar complaints from the local authorities entrusted with the administration of the Acts. The matter was considered by the Select Committee of the House of Commons which inquired into the subject of the Adulteration of Food Products in 1896, and their Report contains the following passage :

> "There has been a general agreement among the witnesses who have given evidence in reference to this subject that the penalties imposed in respect of offences under the Acts are for the most part trifling and quite insufficient to serve as deterrents. Your committee have been told that fines such as 10*s*. with 12*s*. costs are frequently inflicted."

Notwithstanding the attention, however, which was then drawn to the matter, the Local Government Board inform the Secretary of State that in the year 1900, out of 2,673 fines imposed by magistrates under the Sale of Food and Drugs Acts, no less than 764 or over $28\frac{1}{2}$ per cent. were of 10*s*. or less, while 193 penalties were under 5*s*., and 118 were 1*s*. or even less than that sum.

It is unnecessary to point out the injurious consequences of the adulteration of articles of food or the large and sometimes enormous profits that accrue from the practice ; and it is obvious that when the penalty on detection is trifling, it not only fails to be deterrent, but may even spread the mischievous impression that the offence is venial. The Secretary of State

does not wish to be understood as suggesting that these considerations are lost sight of by your Bench, but the figures appear to be sufficient to show that the state of things to which the Parliamentary Committee called attention has not yet been set right ; and he will be glad if you will bring the matter to the notice of the justices, in order that, as occasion arises, they may give special consideration to the question whether the penalties imposed in the cases that come before them are such as are likely to deter the offenders from repeating, and other persons from committing, the offence.

I am, Sir, your obedient Servant,

KENELM E. DIGBY.

The Clerk to the Justices of the
Petty Sessional Division of .

SAMPLES OF BUTTER.

BOARD OF AGRICULTURE,
4, Whitehall Place, London, S.W.,
13*th July*, 1903.

SIR,—I am directed by the Board of Agriculture to draw the attention of your local authority to the fact that samples of butter, alleged to contain water in excess of the proportion indicated by the Board in their "Sale of Butter Regulations, 1902," are frequently received at the Government Laboratory after the lapse of one or two months from the time that the samples were taken, and that subsequently to the date of purchase they have been kept by the inspector in the paper in which they were originally bought. Under these circumstances it is quite impossible for the Government Laboratory to obtain upon analysis figures representing the amount of water present at the time of purchase ; and discrepancies between their results and those of the analysts on which the charge is raised are inevitable.

It is very desirable that, so far as may be found practicable, there should be uniformity of procedure in collecting and retaining samples of butter taken under the Sale of Food and Drugs Acts, and the following recommendations have been drawn up for the guidance of the local officials employed in this work :

(1) The quantity to be purchased should not be less than one pound, except that it may be expedient to purchase only half a pound in cases where there is reason to believe that the object of the purchase would be defeated if a greater quantity were demanded.

(2) The division of the sample into three parts should be made as equally as possible, so that the portion reserved by the purchaser may be not less than one-third of the whole. It is desirable that each portion should consist of one piece only.

(3) The portions should *not* be wrapped in paper, but should be placed, without pressure, in dry and clean screw-capped bottles in such manner that the water present may be retained in the butter.

(4) The screw-capped bottle should be provided with a cork-lined metallic lid. The mouth should be as nearly as possible the full width of the bottle, and the cork lining of the lid should be firmly screwed down against the edge of the bottle.

(5) The bottle, labelled with the necessary particulars, should be enclosed in an envelope of stout paper, which should be secured with the official seal.

(6) The reserved portion should be kept in a cool dark place pending its production in court in the event of proceedings being taken, and if directed by the court to be referred to the Commissioners of Inland Revenue it should be carefully packed in order to ensure its safe transmission to the Government Laboratory.

The Board would be obliged if you would take steps to bring this circular under the notice of your local authority, and they will be glad to forward you additional copies for distribution amongst the members of your local authority and the officers concerned, upon being informed of the number you require.

I am, Sir, your obedient Servant,

T. H. Elliott,

Secretary.

[See also Circular Letter of the Local Government Board, dated February 26th, 1894, *ante*, p. 162.]

DECOMPOSITION OF MILK SAMPLES.

BOARD OF AGRICULTURE,
4, Whitehall Place, London, S.W.,
17*th August*, 1903.

SIR,—I am directed by the Board of Agriculture to acquaint you, for the information of your local authority, that the fact that samples of milk referred to the Government Laboratory under the provisions of the above Acts are invariably sour when received has occasionally given rise to inquiries, by magistrates' clerks and others concerned with the working of the Acts, as to the practicability of making a satisfactory analysis of sour milk, with a view of substantiating or disproving an allegation that the milk has been mixed with water, or that fat has been abstracted from it.

It therefore appears desirable that the Board should state that, except in a limited number of exceptional cases to be hereafter referred to, there is no practical difficulty in accurately inferring the composition of the milk when fresh from the analysis of the milk when sour.

The change which takes place in a sample of milk kept from contact with air, as in a bottle nearly full of the sample, and fitted with a good sound cork sealed with wax, is, as a rule, comparatively slight. The causes and nature of this change have been carefully studied by many observers, and they have been found to be perfectly definite in character. Without going into details concerning the fermentative changes to which milk is liable, it may be stated that the changes which affect the analysis, and, therefore, the inference to be drawn from the results, are concerned with the non-fatty solids only, and more particularly with the milk-sugar. The milk-sugar gives rise, either proximately or remotely, to a variety of products, the most important of which are lactic acid, ethyl alcohol, and acetic acid; but it can be shown that the only quantitative determinations which need be made in order to determine the loss in the non-fatty matter by keeping are the proportion of alcohol, reckoned as proof-spirit, and the amount of free volatile acid, together with the ammonia derived from the alteration of

the casein, or proteid substance, in the milk. The slight alterations in weight consequent on the hydrolysis and conversion of lactose into lactic acid, and the formation of certain so-called bye-products of alcoholic fermentation, are partly positive and partly negative in direction, but their joint effect is too small to have any appreciable influence on the result.

The entire correction, which, of course, is always additive, in the case of a properly preserved sample from three to six weeks old is fairly constant, and may be said to range from 0·2 to 0·3 per cent. In a few cases it has been found to be as low as 0·1 per cent., and in very exceptional cases, as in badly-secured samples, or in bottles only partially filled, it has risen to 0·7 or 0·8 per cent.

If the fermentation has passed into the butyric acid stage, the amount of free acid is greatly increased, and owing to the separated casein it is sometimes impossible to get the sample into a proper and uniform condition for analysis. In such cases the Government Laboratory declines to proceed with the examination. Such a result, however, practically never happens in the case of samples which have been properly taken and kept by the inspectors pending the appeal to the Government Laboratory.

The details of the methods of analysis adopted in the Government Laboratory were fully inquired into by the committee which preceded the issue of the Sale of Milk Regulations in 1901, and are given in Appendix XXIX. to the minutes of evidence taken before the Departmental Committee on Milk and Cream Regulations [Cd. 484].

The following tables [Cd. 484, Appendix XXIX.] give the results of the analysis of a series of milks analysed in the fresh state and after the lapse of several weeks. The examination was carried beyond the time at which a milk would be referred to the Government Laboratory under the Food and Drugs Acts, but it will be seen that the changes can be accurately followed and allowed for. The comparison of the corrected non-fatty solids with the solids of the fresh milk shows that the variations are not greater than may occur in duplicate determinations of the constituents of a fresh milk.

WHOLE MILKS.

No.	Fresh Milk.		Kept Milk.			Total Loss.	
	Non-fatty solids.	Fat.	Time in days.	Non-fatty solids.	Fat.	Calculated.	Actual.
(1)	8·97	4·08	21	8·71	4·02	·20	·26
(1A)	8·97	4·08	27	8·74	3·97	·21	·23
(1B)	8·97	4·08	50	8·61	4·00	·34	·36
(1)	8·97	4·08	85	8·49	4·09	·49	·48
2	8·99	3·17	27	8·60	3·16	·35	·39
3	9·12	4·16	42	8·82	4·18	·33	·30
3A	9·12	4·16	102	8·88	4·18	·25	·24
4	9·02	4·72	41	8·56	4·65	·58	·46
5	9·02	3·28	52	8·76	3·25	·20	·26
5A	9·02	3·28	79	8·53	3·34	·49	·49
5B	9·02	3·28	93	8·35	3·27	·61	·67
6	9·13	4·49	57	8·88	4·35	·23	·25
8	9·52	4·06	74	9·25	3·92	·35	·27
9	9·27	4·07	77	8·91	4·06	·32	·36
10	9·11	4·19	91	8·24	4·14	·76	·87
11	9·34	4·07	91	9·01	4·01	·41	·33
12	8·42	3·70	91	8·14	3·69	·26	·28
13	8·83	5·32	91	8·56	5·20	·31	·27
14	9·20	3·98	91	8·80	3·83	·39	·40

MILKS TO WHICH APPROXIMATELY 10 PER CENT. OF WATER HAS BEEN ADDED.

No.	Fresh Milk.		Kept Milk.			Total Loss.	
	Non-fatty solids.	Fat.	Time in days.	Non-fatty solids.	Fat.	Calculated.	Actual.
1	8·14	3·44	14	7·96	3·41	·27	·18
(2)	8·14	3·44	30	7·81	3·40	·42	·33
3	8·24	2·79	38	7·88	2·78	·33	·36
4	8·24	2·79	38	7·73	2·76	·50	·51

SEPARATED MILKS.

No.	Fresh Milk.		Kept Milk.			Total Loss.	
	Total solids.	Fat.	Time in days.	Total solids.	Fat.	Calculated.	Actual.
1	9·66	·14	27	9·25	Not determined.	·22	·41
1A	9·66	·14	36	9·34		·13	·32
1B	9·66	·14	65	9·35		·26	·31
2	8·91	·09	28	8·62		·28	·29
2B	8·91	·09	37	8·60		·20	·31
3	8·61	·13	30	8·33		·24	·28
3A	8·61	·13	37	8·29		·28	·32
3B	8·61	·13	91	7·93		·58	·68

SEPARATED MILKS TO WHICH APPROXIMATELY 10 PER CENT. OF WATER WAS ADDED.

No.	Fresh Milk.		Kept Milk.			Total Loss.	
	Total solids.	Fat.	Time in days.	Total solids.	Fat.	Calculated.	Actual.
1	8·18	—	21	7·86	Not determined.	·24	·32
1A	8·18	—	387	6·71		1·50	1·47
1B	8·18	—	388	6·64		1·56	1·54
1C	8·18	—	401	6·71		1·50	1·47
2	7·67	—	22	7·22		·33	·45
2A	7·67	—	387	6·24		1·49	1·43
3	7·76	—	73	7·11		·55	·65
4	7·80	—	185	6·22		1·59	1·58
4A	7·80	—	188	6·19		1·69	1·61

The Board would be obliged if you would take steps to bring this circular under the notice of your local authority and they

will be glad to forward you additional copies for distribution amongst the members of your local authority and the officers concerned, upon being informed of the number you require.

I am, Sir, your obedient Servant,

T. H. ELLIOTT,
Secretary.

[See also Circular Letter of the Local Government Board dated February 26th, 1894, *ante*, p. 162.]

NOTES ON SOME OF THE COMMONER FORMS OF ADULTERATION.

The following notes, which it is most convenient to insert here, treat of the various commodities named and their adulteration from a chemical, rather than a legal, point of view :—

Bread.

The Bread Acts of 1822 and 1836 (3 Geo. 4, c. 106, and 6 & 7 Will. 4, c. 37), which, amongst other provisions, prohibit the use of alum in bread, are still in force. The penalty is not so severe as under the Sale of Food and Drugs Acts ; and it is also necessary to prove *mens rea* on the part of the defendant or his servant in order to obtain a conviction (*Core* v. *James* (1871), L. R. 7 Q. B. 135 ; 41 L. J. M. C. 19 ; 25 L. T. 593 ; 20 W. R. 201). But, on the other hand, in a prosecution for mixing alum with bread instituted under the Bread Acts, it is not necessary to prove that bread adulterated with alum is injurious to health ; for they only allow bread to be made with certain ingredients, which do not include alum, and thus, as has been said, prohibit the use of alum. It is useful, therefore, to bear the existence of these Acts in mind.

The addition of alum to bread is always treated as an adulteration. It enables the baker to use an inferior flour, and leads the public to infer that a superior quality has been used owing to the whiteness and general appearance which alum usually produces in the bread, and, therefore, constitutes a serious fraud. A prosecution in this instance would take place under s. 6 of the Act of 1875. But it is further asserted by some that bread containing even small quantities of alum is injurious to health. They hold this opinion on the supposition that the phosphate of alumina, which is formed in the dough when alum is used, is insoluble in the gastric juice, and hence a nutritious part of the bread is lost ; also that the gluten is

hardened and rendered more difficult of digestion. Others, holding the opinion that alum is not injurious, maintain that hydrate of alumina is formed, and not phosphate; but at the same time, supposing the latter to be the case, still that it is soluble in the gastric juice. It is also asserted by some, that in order to render bread containing small quantities of alum injurious to health, it would be necessary to have no other food, for the reason that anyone can obtain sufficient phosphates with a variety of diet, and that the phosphates lost from the bread would not be missed. This argument seems to be untenable, for if the alum is injurious to health in any degree it is an offence under s. 3 of the Act of 1875, the Act not specifying any standards as to the amounts of injurious material which articles of food may contain. Seeing the great diversity of opinion which is sure to arise in prosecutions under s. 3 for adulterating bread with alum, on the ground of being injurious to health, it is safest to proceed in those cases under s. 6, when no difficulty of this kind would arise, and under which many successful prosecutions have taken place.

Another method of adulteration, which is believed to be extensively practised in some places, is the mixing of maize or potato meal with the wheat flour. This is an offence under the Bread Acts (see s. 10 of the Bread Act, 1836, *post*, p. 197), and doubtless also under the Sale of Food and Drugs Acts. Owing, possibly, to the difficulty of detecting the adulteration, few, if any, prosecutions have taken place for the practice.

FLOUR.

It appears that some descriptions of flour contain a certain amount of clay, which cannot be separated by the miller, and it is important that the analyst should be careful to distinguish between the insoluble alumina compounds arising from the accidental earthy impurities and those which are soluble, as when alum is added. As these conditions of alumina are shown to be ascertainable by recognised chemical tests, no difficulty should arise upon this question.

Tea.

Any person falsely representing a mixture to be good tea, and selling it at the price of an article of good quality while three-fourths of it is not tea, but a deleterious compound, is guilty of obtaining money by false pretences, although the mixture was probably made up in China, and had been bought by him from a wholesale tea dealer (*R.* v. *Foster* (1877), 2 Q. B. D. 301 ; 46 L. J. M. C. 128 ; 36 L. T. 44 ; 13 Cox C. C. 393 ; 41 J. P. 295).

Tinned Vegetables.

These are sometimes coloured green with copper salts, which are, of course, highly injurious to health if swallowed in any appreciable quantity. Prosecutions for selling such articles should therefore be instituted under s. 3 as well as s. 6 of the Act of 1875. See *Summers* v. *Grist*, *ante*, p. 5. The Departmental Committee of 1899 recommended that the use of copper salts in colouring preserved foods should be absolutely prohibited (see p. 6, *ante*). This recommendation has not yet been acted upon, but probably no difficulty will be found in securing convictions in cases where any substantial quantity of copper is found.

Butter.

Butter, like all natural products, varies considerably in composition. The fixed fatty acids are understood to range from 85·5 to practically 90 per cent., and the soluble fatty acids vary to a corresponding extent. The total of the two acids should amount to 93·6 or thereabouts. The variations in the composition are supposed to be due to difference in the breed of cows and the variations in food and climate. The adulteration of butter usually consists in the admixture of foreign fat, but a more common offence is the sale of a factitious article under the name of butter, provision for which has

been made by the Margarine Act, 1887. Factitious butters, when prepared from some fats and derived from a proper source, are considered wholesome and suitable food by many high authorities ; and if the article is sold under its proper name no offence is committed. The Parliamentary Committee, in their Report of 1896, p. 26, observe that "The difficulties experienced in determining whether margarine is present in a sample of so-called butter have been explained to your committee, and they have been informed that 'the adulterators could take an ordinary butter of good quality and add to that a quantity of foreign fat, and in chemical composition this mixture will correspond with genuine *bonâ fide* butter.' There seems reason to believe that if the margarine added does not exceed a certain proportion, the adulteration is practically impossible of detection by any methods of analysis at present known."

Owing to the way in which it is manufactured butter always contains a considerable amount of water, which is usually greater in the salted article than in the fresh. Advantage is sometimes taken of this fact to increase the bulk of butter by mixing a further quantity of water with it, and for a long time there was a difference of opinion as to how much water an honest sample of butter ought to contain. By the Sale of Butter Regulations, 1902 (*ante*, p. 158), this quantity is fixed at 16 per cent., but, as in the case of milk, if a sample is found to be below the standard it is open to the vendor to show, if he can, that the article is in fact genuine, or, in the words of s. 6 of the Act of 1875, that the surplus water was added to prepare the butter as an article of commerce in a state fit for carriage or consumption, and not fraudulently to increase its bulk or conceal its inferior quality. In the sessions of 1902 and 1903 Bills were introduced into Parliament by the Board of Agriculture absolutely prohibiting the sale of butter containing more than a certain percentage of water, but were dropped owing to the pressure of other business.

Quite recently an article has been extensively sold which consists of butter mixed with a quantity of milk. The prac-

tical result of the process is to cause the product to contain an excess of water, and consequently its sale as butter is punishable. See *Pearks* v. *Knight*, *ante*, p. 22. But, of course, no offence is committed if the real nature of the compound is disclosed to the purchaser at the time of sale. See *Pearks* v. *Houghton*, and *Hayes* v. *Rule*, *ante*, pp. 16 and 17.

MILK.

Milk is an article which varies very considerably in composition, the difference arising partly from the breed of the cow, and partly from the way in which the animal is fed and housed. There is also a perceptible difference between the milk given by the same cow at different times of the year. At one time there was considerable diversity of opinion as to what was the composition of the weakest milk which could be regarded as genuine, and no less than seven different standards were suggested to the Committee on Food Products Adulteration, who reported in 1896, ranging from fat 3·6 per cent. and other solids 9 per cent. to fat 2·5 per cent. and other solids 8·5 per cent. By the Sale of Milk Regulations, 1901 (*ante* p. 154), however, a definite standard, of fat 3 per cent. and other solids 8·5 per cent, has been set up. But it should be observed that milk falling short of the standard is only to be presumed to be adulterated until the contrary is proved, and if a seller of such milk succeeds in proving that the milk was the unaltered product of a healthy cow, properly fed and properly milked (see *Smithies* v. *Bridge*, *ante*, p. 22), he will escape conviction. However, in practice it will probably be found very difficult to prove this, though there is no doubt that some cows, especially of some foreign breeds, seldom or never give milk which comes up to the standard.

Separated milk is sometimes sold as skimmed milk, and such a sale is a fraud upon the purchaser, because considerably more fat can be removed by a separator than by the ordinary method of skimming, and is punishable under the Acts (see *Petchey* v. *Taylor*, *ante*, p. 39). By the Sale of Milk Regulations, skimmed

or separated milk containing less than 9 per cent. total solids is to be presumed to be adulterated until the contrary is proved.

Buttermilk, which is largely used as an article of diet in some parts of the Kingdom, also varies greatly in composition, because a certain amount of water has often to be added to the milk in the process of butter making in order to facilitate the separation of the butter fat, and this quantity varies with the temperature of the air at the time of butter making. But an addition of more than 25 per cent. of water ought to be regarded as fraudulent, and even 25 per cent. ought only to be necessary under quite exceptional circumstances.

BEER.

From the decision in *Pashler* v. *Sterenitt* (1876) (see p. 20, *ante*), beer must be considered to be the article ordinarily sold under that name, and that it would be to the prejudice of the purchaser to sell to him or her as beer an article not of the nature, substance, and quality of that ordinarily sold as such, whether containing ingredients injurious to health or not. According to the definition laid down in the Revenue Laws, the term *beer* includes ale, porter, spruce beer, and black beer (Inland Revenue Act, 1880 (43 & 44 Vict. c. 20, s. 2)), and the same is to be construed to extend to any liquor made or sold as a description of or as a substitute for beer, and in which, on analysis, there shall be found a greater proportion than 2 per cent. of proof spirit (Customs and Inland Revenue Act, 1885 (48 & 49 Vict. c. 51, s. 4)).

Seeing that beer may now be prepared from any description of materials, it clearly became necessary to lay down a wide definition of the term *beer*.

In the last mentioned Act (48 & 49 Vict. c. 51), a clause occurs intended for the suppression of the adulteration of beer. By s. 8 it is enacted: (1) A brewer of beer for sale shall not adulterate beer, or add any matter or thing thereto (except finings for the purpose of clarification or other matter

or thing sanctioned by the Commissioners of Inland Revenue) before the same is delivered for consumption, and any beer found to be adulterated or mixed with any other matter or thing (except as aforesaid) in the possession of a brewer of beer for sale shall be forfeited, and the brewer shall incur a fine of fifty pounds ; (2) A dealer in or retailer of beer shall not adulterate or dilute beer, or add any matter or thing thereto (except finings for the purpose of clarification), and any beer found to be adulterated or diluted or mixed with any other matter or thing (except finings) in the possession of a dealer in or retailer of beer shall be forfeited, and he shall incur a fine of fifty pounds.

There have been comparatively few prosecutions for the adulteration of beer under the Sale of Food and Drugs Acts, and the few that have taken place have been generally for an excess of common salt. The question of a limit for the amount of salt in beer has been much discussed by analysts, but no general agreement has been arrived at on the subject. There are considerable difficulties in the way of fixing a reasonable limit on account of the variable quantities of common salt contained in the brewing waters as well as in the materials used, especially in refiners' syrups. It is well known that there are beers which contain, from one or other of these causes, considerably over 100 grains of common salt to the gallon, and the Select Committee of 1894—1896 in their Report stated that analysts differ as to the quantity of salt permissible in beer, but they did not make any recommendation on the subject.

The question of limit is in fact one that can only be decided with reference to the particular circumstances of each case. This is well shown by the fact that a special case (*Thorney* v. *Shute* (1893), unreported), which was stated by the Justices of Merthyr for the opinion of the High Court, was remitted to the justices by WRIGHT and MATHEW, JJ., with the following questions to be answered : (1) Was there such an excess of salt as to make the beer not of the (a) nature, (b) substance, (c) quality, of the article demanded ? (2) Was there such an excess of salt as to be to the prejudice of the purchaser, as tending to increase thirst ? (3) Was the amount of salt in

excess of the quantity required for the production or preparation of beer as an article of commerce? It may, perhaps, be useful to add that in this particular case the justices answered the first two questions in the negative, while as to the third they gave it as their opinion that "any quantity may be used provided it is not injurious to health or added fraudulently."

At Lambeth Police Court a publican was summoned for selling beer containing 96 grains of common salt or chloride of sodium per gallon. It appeared from the evidence that sugar had been used in the brewing of the beer, and the analyst stated that this would account for the excess of salt. The magistrate fined the defendant, stating that if the salt had been directly added he would have inflicted the highest penalty (*Analyst*, vol. ii., p. 226).

At Worcester Police Court a publican was summoned for selling beer containing 98 grains of salt per gallon. It was proved on analysis that the water with which the beer was brewed contained only $10\frac{1}{2}$ grains of salt per gallon. The defendant admitted putting in one farthing's worth of salt in 115 gallons of ale, stating that the person who instructed him in the art of brewing told him to put in this quantity of salt. The magistrates fined him 50*s.* and costs (*Analyst*, vol. iv., p. 174).

At the Sessions House, Boston, a publican was summoned for selling beer adulterated with 60 grains of salt per gallon. Certificates of analysts for the defence were produced to the effect that the water with which the beer in question was brewed contained 30 grains of salt, and that between the quantity contained in the materials used in brewing, and the concentration of the chlorides through the evaporation of the water by boiling, the amount of salt would be increased from 18 to 20 grains per gallon. On this evidence the magistrate dismissed the case (*Analyst*, vol. ix., p. 72).

An appreciable quantity of arsenic has occasionally been found in beer. It is, of course, not intentionally added as an adulterant, but its presence is due to the use of glucose

instead of sugar in brewing. The glucose is made by treating various starchy substances with sulphuric acid, and if pure ingredients are used the product is wholesome and may be used legitimately. But crude sulphuric acid usually contains arsenic, derived from the sulphur from which it is made, and if such acid is used in making brewing materials the arsenic is sure to find its way into the beer. This is, of course, a very dangerous impurity, and the seller of such beer would be liable to a conviction under s. 3 of the Act of 1875 unless he could show that he did not know of, and could not with reasonable diligence have ascertained, the presence of arsenic.

It has been said that arsenic may also be found in beer brewed entirely from malt and hops. The malt is often dried in a kiln over an anthracite fire, and if pyrites containing arsenic is present in the anthracite a certain amount of arsenic might be deposited on the malt and so find its way into the beer. But it is believed that if any arsenic is introduced in this way the quantity is so extremely small as to be of no practical importance.

COFFEE.

The preparation of substitutes for coffee is legally recognised, and their mode of sale in a separate state or mixed with coffee is subject to stringent statutory regulations for revenue purposes. Chicory, like coffee, may be sold loose, and in any quantity, but a mixture of chicory and coffee must be declared to the purchaser at the time of the sale either verbally or by a written notice or by a label. Other articles may be prepared and sold as substitutes for coffee or chicory, but they are not allowed to be sold alone or mixed with coffee or chicory except upon payment of a special duty under the following conditions imposed by s. 6 of the Customs and Inland Revenue Act, 1882 (45 & 46 Vict. c. 41) :

(1.)—(*a*) "The article or substance or mixture shall be placed in packets, each containing one quarter of a pound or any number of quarters of a pound :

(*b*) "Each such packet shall have affixed thereto a label or labels (which shall not have been before used) denoting the proper amount of duty payable upon such packet according to the weight thereof :

(*c*) "Such label or labels shall be affixed so that the whole thereof shall adhere to the packet, and so that the packet cannot be opened without tearing or destroying the label or labels :

(*d*) "Where more than one label is affixed to any packet the labels shall be affixed so that every label shall be wholly or partially visible.

"Provided that each such packet containing, or purporting to contain, coffee with any other article or substance mixed therewith shall have affixed thereto a label, in manner hereinbefore provided, denoting in letters of not less size than the largest letters affixed to or imprinted on such label the proper name of the several articles or substances of which such mixture is composed."

YEAST.

It is the common practice to mix a certain proportion of starch with yeast as a preservative, and the presence of the starch is not regarded as an adulteration.

LARD.

Pure lard is made exclusively from hog fat, and rarely contains more than a few tenths per cent. of water. In some instances cotton seed oil and water have been used in the adulteration of lard, but not to any great extent. A very general practice, however, has existed of mixing about five per cent. of beef fat or stearine for stiffening purposes with imported American lard and the lard refined in this country from American lard. With regard to this practice, the Select Committee observe in their Report (p. 35) that "The evidence shows that the mixing of beef stearine with lard for the purpose referred to is appreciated by the public, while no question has been

raised as to the wholesomeness of the compound. Such addition has, however, been regarded as an adulteration within the meaning of the Acts, and, owing to the prosecutions which have taken place, makers have been led to discard the addition of beef stearine."

JAM AND MARMALADE.

At the Sittingbourne Petty Sessions a grocer was summoned for selling as plum jam a certain compound which consisted of a mixture of plum and apple. The inspector asked for *Steer's plum jam*, and the defendant pleaded that he got what he asked for, and that being sold under the above name it need not necessarily be composed of plum only. The magistrates, however, imposed a fine, as they considered that if jam was sold as *plum jam* it ought not to be a mixture of plum and apple, and that its sale was an offence under the statute (*Analyst*, vol. ix., p. 50).

In making jam and marmalade glucose is often used instead of sugar. This is said to prevent the growth of mildew, and in the case of marmalade it is now settled that the practice is unobjectionable (see *Smith* v. *Wisden* and *Wilson* v. *McCutcheon*, *ante*, p. 25), and no doubt this ruling would also apply to jam. But glucose made of impure materials sometimes contains arsenic (see pp. 186, 187, *ante*), and the sale of jam made of such glucose would be an offence under the Acts.

CHOCOLATE.

Chocolate is admittedly a manufactured article, and although there is no particular recognised formula for its preparation, yet there are well-known recipes given for its manufacture which are commonly followed, and these include, besides flavouring ingredients, sugar, and in some descriptions also farina, as an absorbent for the oil. When the lines laid down in the popular forms are closely followed in the manufactured articles no offence can reasonably arise against the Acts, but when the quantities of sugar and starch are largely increased beyond the proportions usually employed, and the cocoa

present is reduced to a mere skeleton, a ground of complaint might fairly arise that the article supplied was not of the nature, substance, and quality of the article demanded.

Before the Teignmouth Police Court a grocer was summoned for selling adulterated chocolate. On analysis it was proved to consist of a mixture of cocoa, sugar, and arrowroot. The defendant pleaded that there was no definite standard for chocolate—that it was a manufactured article, and there was no such thing as pure chocolate, like coffee, tea, etc. Also, that different manufacturers prepared their chocolate in different ways. The Bench dismissed the case, as they were not satisfied of what chocolate ought really to consist, and thought that there did not seem to be any definite and recognised formula for its preparation (*Analyst*, vol. iv., p. 96).

COCOA.

There are three principal forms of commercial or prepared cocoa, the best known of which is perhaps that which is prepared by the addition to pure cocoa of some farinaceous substance and sugar. Another form, "cocoa extract" or "essence," is free from additions, and is manufactured by expression of a large part of the natural oil from the pure cocoa and the grinding of the residuum. The third method of manufacturing is known as the Dutch or alkaline process.

The Select Committee of 1894—1896 were of opinion that the sale of cocoa prepared as above without any notice of admixture would be an infringement of the Acts; but in one case, at any rate, the High Court appears to have taken a different view (see *R.* v. *Field. ante*, p. 26).

MUSTARD.

At Jedburgh, Scotland, before the sheriff, several grocers were summoned for selling certain quantities of Colman's mustard not of the nature, substance, or quality demanded. The defendants proved that it was not usual to sell the pure

mustard unless specially asked for ; also if mustard was not mixed with some article to absorb the oil of the mustard, it became lumpy by keeping, and was also too strong for table use. The sheriff dismissed the cases, stating that it was quite evident that when a customer asked for mustard he expected to get it mixed unless he specially asked for pure mustard (*Analyst*, vol. vii., p. 91).

In *Sandys* v. *Markham* (1887), 41 J. P. 52, where mustard had been sold containing an admixture of flour, the justices found as a fact that 35 per cent. of flour was required for the preparation of mustard as an article of commerce in a fit state for consumption. As the case disclosed no evidence whatever to support such a finding, it was remitted to be re-stated.

As many persons prefer diluted mustard, to meet the difficulty, mustard containing an admixture of flour is generally described as "*mustard condiment*" ; and there seems no doubt that it ought to be so described in order that no risk of a prosecution may arise. The Select Committee refused to express an opinion on the question, but stated : "It is obvious that an answer to this question is required in order to determine whether condiment mustard may be sold under the simple designation of mustard, or whether it should be labelled and sold as a mixture."

WINE.

There is no record of any prosecution having taken place for the adulteration of foreign wines. The tampering with such wines in this country outside the bonded warehouse is almost unknown.

A chemist was summoned before the Salford Borough Police Court for selling unfermented wine not of the quality demanded. The case turned upon the question how much grape-juice unfermented wine should contain. This particular wine contained only about 10 per cent. of grape-juice. The magistrate, after hearing evidence, dismissed the case, on the ground that there was no standard of how much grape-juice the wine should contain, and that it could not be said that the manu-

facturer had made this wine from water, for there was some evidence that a certain proportion of grape-juice had been employed (*Analyst*, vol. v., p. 70).

PEPPER.

The adulteration of pepper is now inconsiderable, but at one time prosecutions for the adulteration of pepper by an admixture of rice and other starch flour were tolerably numerous. There have also been several prosecutions for the presence of an excessive quantity of sand or earthy matter. It appears that the pepper berries, which are allowed to remain upon the trees until they fall to the ground, take up a certain quantity of sand and earthy matter, and it is difficult by ordinary manipulation to remove the portion which is deposited in the wrinkles of the berries without a loss of the substance of the berry itself. Also a small quantity of sand gets into the pepper in the grinding, which is effected in this country between stones. Black pepper is sometimes adulterated with an admixture of ground pepper husks.

The chemical referees where necessary still append to their certificates of analysis in cases of sand in pepper a statement to the effect that "although sand is not a natural constituent of pepper, a greater or less quantity becomes mixed with it in the process of collection or preparation, and we have found ground Penang pepper, which is the kind most extensively used in this country, to contain, as sold by some of the best wholesale houses, from 1·58 to 2·77 per cent. of such extraneous sandy matter, and ground Siam pepper, occasionally but not largely used, 3·27 per cent." ; and that, in their opinion, the last-named quantity is a reasonable margin for the presence of unavoidable sandy matter.

SAGO.

It appears that in some districts a particular form of tapioca is sold as sago. This is not done for any fraudulent purpose,

but to meet the taste of consumers, and there is reason to believe that in those districts an ordinary purchaser asking for sago would expect to get this tapioca and would refuse the genuine sago if it were offered. Under these circumstances this article may, of course, be legitimately sold as sago, and a decision to this effect was given by the King's Bench Division in an unreported case decided in 1903.

Drugs.

There are no standards of quality laid down in the Acts for drugs, and they contain no provision making the British Pharmacopœia a standard for such drugs or medicines as are specified therein. A suggestion was made in 1879 before the Select Committee on the Amendment Bill (now the Act of 1879), that it would be desirable to incorporate with the Sale of Food and Drugs Acts, s. 15 of the Pharmacy Act, 1868 (31 & 32 Vict. c. 121), which directs chemists to compound medicines of the British Pharmacopœia according to the formulæ therein, but the committee apparently did not see their way to adopt the suggestion. The proposal was again made to the Select Committee of 1894—1896 (p. 39 of Committee's Report), but they made no recommendation in their report on the subject.

The British Pharmacopœia, which is somewhat restricted in its scope, and is essentially intended to establish a uniform standard of strength and composition of drugs for the use of the medical profession in prescribing for their patients, could not be expected to include and govern the great variety of medicinal preparations which are prepared and sold under various names for domestic use. When, however, any British Pharmacopœia medicine is asked for, especially in the exact terms of the description given of the same in the "Pharmacopœian," it is usually necessary that the person should be supplied with the article prepared according to the formula given therein. Thus, if a person who asked for "sweet spirit of nitre," was supplied with an article not of the standard of

the British Pharmacopœia (*cf. White* v. *Bywater*, *ante*, p. 23), he might fairly consider himself as prejudiced by the transaction.

But this is not the case unless the British Pharmacopœia states exactly what the constituent parts of the article should be (see *Hudson* v. *Bridge*, *ante* p. 23). And it is possible that in some cases there may be a commercial standard for the article, differing from that of the Pharmacopœia (see *Boots* v. *Cowling*, *ante*, p. 24).

OTHER ADULTERATION ACTS.

THE BREAD ACT, 1836 (*a*).

(6 & 7 Will. 4, c. 37.)

* * * * *

[28th July 1836.]

1. [*Repealed by the Statute Law Revision Act*, 1890.]

2. *Bread made of the articles herein mentioned may be sold.*—It shall and may be lawful for the several bakers or sellers of bread out of the city of London and the liberties thereof, and beyond the weekly bills of mortality and ten miles of the Royal Exchange, to make and sell or offer for sale, in his, her, or their shop, or to deliver to his, her, or their customer or customers, bread made of flour or meal of wheat, barley, rye, oats, buckwheat, Indian corn, peas, beans, rice, or potatoes, or any of them, and with any common salt, pure water, eggs, milk, barm, leaven, potato or other yeast, and mixed in such proportions as they shall think fit, and with no other ingredient or matter whatsoever, subject to the regulations hereinafter contained.

[*Sections* 3—7 *inclusive do not deal with adulteration.*]

8. *Penalty for adulterating bread.*—No baker or other person or persons who shall make bread for sale beyond the limits aforesaid, nor any journeyman or other servant of any such baker or other person, shall at any time or times, in the making of bread for sale beyond such limits, use any mixture or ingredient whatsoever in the making of such bread, other than and except as hereinbefore mentioned, on any account or under any colour or pretence whatsoever, upon pain that every such person, whether master or journeyman, servant or other person, who

(*a*) The provisions of the Bread Act, 1822, which relates to the sale of bread in London and within ten miles of the Royal Exchange, and within the weekly bills of mortality, are, so far as regards adulteration, practically identical with the provisions of this Act.

shall offend in the premises, and shall be convicted of any such offence by the oath, or in case of a Quaker by affirmation, of one or more credible witness or witnesses, or by his, her, or their own confession, shall for every such offence forfeit and pay any sum not exceeding ten pounds . . . or in default thereof shall, by warrant under the hands and seals of the magistrate or magistrates, justice or justices, before whom such offender shall be convicted, be apprehended and committed to the house of correction or some prison of the city, county, borough, or place where the offence shall have been committed, or the offender or offenders shall be apprehended, there to remain . . . with or without hard labour from the time of such commitment, unless the penalty shall be sooner paid, as any such magistrate or magistrates, justice or justices, shall think fit and order ; and it shall be lawful for the magistrate or magistrates, justice or justices, before whom any such offender or offenders shall be convicted, to cause the offender's name, place of abode, and offence to be published in some newspaper which shall be printed or published in or near the city, county, borough, or place where the offence shall have been committed, and to defray the expense of publishing the same out of the money to be forfeited as last mentioned, in case any shall be so forfeited, paid, or recovered.

9. *Penalty for adulterating corn, meal, or flour.*—If any person beyond the limits aforesaid shall put into any corn, meal, or flour, which shall be ground, dressed, bolted, or manufactured for sale beyond such limits, either at the time of grinding, dressing, bolting, or manufacturing the same, or at any other time, any ingredient or mixture whatsoever not being the real and genuine produce of the corn or grain which shall be so ground ; or if any person shall beyond the limits aforesaid knowingly sell or offer or expose for sale, either separately or mixed, any meal or flour of one sort of corn or grain as the meal or flour of any other sort of corn or grain, or any ingredient whatsoever mixed with the meal or flour so sold or offered or exposed for sale , then and in every such case every person so offending shall, upon conviction before any one or more

magistrate or magistrates, justice or justices, of the city, county, borough, or place where such offence shall have been committed, on the oath, or in case of a Quaker by affirmation, of one or more credible witness or witnesses, or by his, her, or their own confession, forfeit and pay for every such offence any sum not exceeding twenty pounds . . .

10. *Bread made of mixed meal or flour to be marked with a Roman M.*—Every person who shall make for sale, or sell or expose for sale, beyond the limits aforesaid, any bread made wholly or partially of peas or beans, or potatoes, or of any sort of corn or grain other than wheat, shall cause all such bread to be marked with a large Roman M. ; and if any person shall at any time beyond the limits aforesaid make or sell, or expose for sale, any such bread without such mark as hereinbefore directed, then and in every such case every person so offending shall, upon conviction in manner hereinafter mentioned, forfeit and pay for every pound weight of such bread, and so in proportion for any less quantity which shall be so made for sale, or sold or exposed for sale, without being so marked as aforesaid, any sum not exceeding ten shillings, as the magistrate or magistrates, justice or justices, before whom such conviction shall take place, shall from time to time order and adjudge : Provided always, that nothing in this Act contained shall extend or be construed to extend to require any bread made of the meal or flour of wheat only, and in the making of which potato yeast shall be used, to be marked as hereinbefore is mentioned.

11. *Justices, etc., may search premises of millers, bakers, etc., and if any adulterated flour, bread, etc., be found, the same may be seized and disposed of.*—It shall be lawful for any magistrate or magistrates, justice or justices of the peace, within the limits of their respective jurisdictions, and also for any peace officer or officers authorised by warrant under the hand and seal or hands and seals of any such magistrate or magistrates, justice or justices, (and which warrant any such magistrate or magistrates, justice or justices, is and are hereby empowered to grant,) at

seasonable times in the daytime, to enter into any house, mill, shop, stall, bakehouse, bolting house, pastry warehouse, outhouse, or ground of or belonging to any miller, mealman, or baker, or other person who shall grind grain, or dress or bolt meal or flour, or make bread for reward or sale beyond the limits aforesaid, and to search or examine whether any mixture or ingredient not the genuine produce of the grain such meal or flour shall import or ought to be shall have been mixed up with or put into any meal or flour in the possession of such miller, mealman, or baker, either in the grinding of any grain at the mill, or in the dressing, bolting, or manufacturing thereof, whereby the purity of any meal or flour is or shall be in anywise adulterated, or whether any mixture or ingredient other than is allowed by this Act shall have been mixed up with or put into any dough or bread in the possession of any such baker or other person, whereby any such dough or bread is or shall be in anywise adulterated, and also to search for any mixture or ingredient which may be intended to be used in or for any such adulteration or mixture ; and if on any such search it shall appear that any such meal, flour, dough, or bread so found shall have been so adulterated by the person in whose possession it shall then be, or any mixture or ingredient shall be found which shall seem to have been deposited there in order to be used in the adulteration of meal, flour, or bread, then and in every such case it shall be lawful for every such magistrate or magistrates, justice or justices of the peace, or officer or officers authorised as aforesaid respectively, within the limits of their respective jurisdictions, to seize and take any meal, flour, dough, or bread which shall be found in any such search, and deemed to have been adulterated, and all ingredients and mixtures which shall be found and deemed to have been used, or intended to be used, in or for any such adulteration as aforesaid ; and such part thereof as shall be seized by any peace officer or officers authorised as aforesaid, shall, with all convenient speed after seizure, be carried to the nearest resident magistrate or magistrates, justice or justices of the peace, within the limits of whose jurisdiction the same shall have been so seized ; and if any

magistrate or magistrates, justice or justices, who shall make any such seizure in pursuance of this Act, or to whom anything so seized under the authority of this Act shall be brought, shall adjudge that any such meal, flour, dough, or bread so seized shall have been adulterated by any mixture or ingredient put therein other than is allowed by this Act, or shall adjudge that any ingredient or mixture so found as aforesaid shall have been deposited or kept where so found for the purpose of adulterating meal, flour, or bread, then and in any such case every such magistrate or magistrates, justice or justices of the peace, is and are hereby required, within the limits of their respective jurisdictions, to dispose of the same as he or they, in his or their discretion, shall from time to time think proper.

12. *Penalty if ingredients for adulteration of meal or bread are found in any premises.*—Every miller, mealman, or baker beyond the limits aforesaid, in whose house, mill, shop, stall, bakehouse, bolting house, pastry warehouse, outhouse, ground, or possession any ingredient or mixture shall be found which shall, after due examination, be adjudged by any magistrate or magistrates, justice or justices of the peace, to have been deposited there for the purpose of being used in adulterating meal, flour, or bread, shall, on being convicted of any such offence, either by his, her, or their own confession, or by the oath, or in case of a Quaker by affirmation, of one or more credible witness or witnesses, forfeit and pay on every such conviction any sum not exceeding ten pounds . . . for the first offence, five pounds for the second offence, and ten pounds for every subsequent offence, or in default of payment thereof shall, by warrant under the hand and seal or hands and seals of the magistrate or magistrates, justice or justices, before whom such offender shall be convicted, be apprehended and committed to the house of correction or some prison of the city, county, or place where the offence shall have been committed, or the offender or offenders shall be apprehended, there to remain . . . with or without hard labour from the time of such commitment (unless the penalty be sooner paid),

as any such magistrate or magistrates, justice or justices, shall think fit and order; and it shall be lawful for the magistrate or magistrates, justice or justices, before whom any such offender shall be convicted, to cause the offender's name, place of abode, and offence to be published in some newspaper which shall be printed or published in or near the city, county, borough, or place where the offence shall have been committed, and to defray the expense of publishing the same out of the money to be forfeited as last mentioned, in case any shall be so forfeited, paid, or recovered.

13. *Penalty for obstructing search, etc.*—If any person or persons shall wilfully obstruct or hinder any such search as hereinbefore is authorised to be made, or the seizure of any meal, flour, dough, or bread, or of any ingredient or mixture which shall be found on any such search, and deemed to have been lodged with an intent to adulterate the purity or wholesomeness of any meal, flour, dough, or bread, or shall wilfully oppose or resist any such search being made, or the carrying away any such ingredient or mixture as aforesaid, or any meal, flour, dough, or bread which shall be seized as being adulterated, or as not being made pursuant to this Act, he, she, or they so doing or offending in any of the cases last aforesaid shall for every such offence, on being convicted thereof, forfeit and pay such sum, not exceeding ten pounds, as the magistrate or magistrates, justice or justices, before whom such offender or offenders shall be convicted, shall think fit and order: Provided also, that if any person making or who shall make bread for sale beyond the limits aforesaid shall at any time make complaint to any magistrate or magistrates, justice or justices of the peace, within his or their jurisdiction, and make appear to him or them, by the oath, or in case of a Quaker by affirmation, of any credible witness, that any offence which such person shall have been charged with, and for which he or she shall have incurred and paid any penalty under this Act, shall have been occasioned by or through the wilful act, neglect, or default of any journeyman, or other servant employed by or under such person so making complaint, then

and in any such case any such magistrate or magistrates, justice or justices, may and is or are hereby required to issue out his or their warrant, under his or their hand and seal or respective hands and seals, for bringing any such journeyman or servant before any such magistrate or magistrates, justice or justices, or any magistrate or justice of the peace acting in and for the city, county, division, or place where the offender can be found ; and on any such journeyman or servant being thereupon apprehended and brought before any such magistrate or magistrates, justice or justices, he or they, within his or their respective jurisdictions, is and are hereby authorised and required to examine into the matter of such complaint, and on proof thereof upon oath or affirmation, to the satisfaction of any such magistrate or magistrates, justice or justices of the peace, who shall hear such complaint, then any such magistrate or magistrates, justice or justices, is and are hereby directed and authorised, by any order under his or their respective hand or hands, to adjudge and order what reasonable sum of money shall be paid by any such journeyman or servant to his master or mistress as or by way of recompense to him or her for the money he or she shall have paid by reason of the wilful act, neglect, or default of any such journeyman or servant ; and if any such journeyman or servant shall neglect or refuse, on his conviction, to make immediate payment of the sum of money which any such magistrate or magistrates, justice or justices, shall order him to pay by reason of such his said wilful neglect or default, then any such magistrate or magistrates, justice or justices, within his or their respective jurisdiction, is or are hereby authorised and required, by warrant under his or their hand and seal or hands and seals, to cause such journeyman or servant to be apprehended and committed to the house of correction, or some other prison of the city, county, division, or place in which such journeyman or servant shall be apprehended or convicted, to be there kept to hard labour for any term not exceeding one calendar month.

[*Sections* 14 *and* 15 *do not relate to adulteration.*]

16. *Penalty for opposing execution of this Act.*—In case any person or persons shall resist or make forcible opposition against any person or persons employed in the due execution of this Act, every such person offending therein shall for every such offence forfeit any sum not exceeding ten pounds, at the discretion of the magistrate or magistrates, justice or justices of the peace, before whom he or she shall be convicted of such offence.

17. *Recovery and application of penalties and forfeitures.*—All penalties, forfeitures, and fines by this Act inflicted or authorised to be imposed (the manner of levying and recovering and applying whereof is not herein otherwise directed) shall, upon proof and conviction of the offences respectively before any magistrate or justice of the peace for the city, county, or place where the offence shall have been committed (as the case may require), either by the confession of the party offending, or by the oath, or in case of a Quaker on affirmation, of any credible witness or witnesses, which oath or affirmation every such magistrate or justice is in every such case hereby fully authorised to administer, be levied, together with the costs attending the information and conviction, by distress and sale of the goods and chattels of the party or parties offending, by warrant under the hand and seal of such magistrate or justice . . . ; but if upon return of such warrant it shall appear that no sufficient distress can be had thereupon, then it shall be lawful for any such magistrate or justice of the peace as aforesaid, and he is hereby authorised and required, by warrant or warrants under his hand and seal, to cause such offender or offenders to be committed to the common gaol or house of correction of the city, county, or place where the offender shall be or reside, there to remain without bail or mainprize for any time not exceeding one calendar month, with or without hard labour, (save and except as herein otherwise directed,) unless such penalties, forfeitures, and fines, and all reasonable charges attending the same, shall be sooner paid and satisfied ; and the moneys arising by such penalties, forfeitures, and fines respectively when paid or levied, if not otherwise directed to be

applied by this Act, shall be from time to time paid, one moiety thereof to the informer or person suing for and recovering the same, . . .

[*Sections* 18 *to* 23, *inclusive, are repealed by the Summary Jurisdiction Act*, 1884.]

24. *Proceedings not to be quashed for want of form, etc.*—No order, judgment, or conviction made touching or concerning any of the matters in this Act contained, or of any proceedings to be had touching the conviction of any offender or offenders against this Act, shall be quashed for want of form, or be removed or removable by certiorari, or any other writ or process whatsoever, into any of his Majesty's Courts of Record at Westminster; . . .

25. *Appeal to quarter sessions.*—Provided always, that if any person or persons convicted of any offence punishable by this Act shall think him, her, or themselves aggrieved by the judgment of the magistrate or magistrates, justice or justices, before whom he, she, or they shall have been convicted, it shall be lawful for such person or persons from time to time to appeal to the justices at the next general or general quarter sessions of the peace which shall be held for the city, county, division, liberty, town, or place where such judgment shall have been given, and that the execution of such judgment shall in such case be suspended, . . .

[*Section* 26 *is repealed by the Summary Jurisdiction Act*, 1884.]

[*Section* 27 *relates to the application of penalties in Scotland.*]

[*Sections* 28 *and* 29 *are repealed by the Statute Law Revision Act*, 1884.]

[*Section* 30 *is repealed by the Public Authorities Protection Act*, 1893.]

31. *Limitation of prosecutions.*—Provided also, that no person shall be convicted of any offence under this Act, unless the complaint is made within forty-eight hours after the offence

shall have been committed, or within such reasonable time as to the justice or justices shall seem fit, except in cases of perjury; and that no person who shall be prosecuted to conviction for any offence done or committed against this Act shall be liable to be prosecuted for the same offence under any other law.

32. *Application of penalties.*—All penalties and forfeitures by this Act inflicted, and the application of which is not hereinbefore directed, shall, when recovered or paid, go and be disposed of in manner following; (that is to say,) one moiety thereof, where any offender or offenders shall be convicted, either by his, her, or their confession, or by the oath or affirmation of one or more credible witness or witnesses, shall go and be paid to the person or persons who shall inform against and prosecute to conviction any such offender or offenders; and the other moiety thereof (or, in case there be no such person informing, then the whole thereof) shall go and be paid to some one of the overseers of the poor, or to some other officer, (as the convicting justice or justices may direct,) of the parish, township, or place in which the offence shall have been committed, to be by such overseer or officer paid over to the use of the general rate of the county, riding, or division in which such parish, township, or place shall be situate, whether the same shall or shall not contribute to such general rate; and no inhabitant of such county, riding, or division shall be deemed an incompetent witness in any proceeding under this Act by reason of the application of such penalty or forfeiture to the use of the said general rate as aforesaid.

33. *Saving of certain rights.*—Provided always, that this Act or any thing herein contained shall not extend or be construed to extend in any way to affect, lessen, or infringe upon any right or custom of the Universities of Oxford or Cambridge or either of them, or of any lord or lords of any leets, or the rights of any clerk or clerks of the market in any place, which may be exercised and enjoyed by them or any of them by virtue of any charter, byelaws, prescriptions, usages, customs, privileges, grants, or Acts of Parliament, except so far as relates to the

assize of bread and the regulations of the price and weight thereof ; but that all such rights and privileges shall be held, exercised, and enjoyed by the parties respectively entitled thereto, as fully and amply to all intents and purposes as the same were held, exercised, and enjoyed before the passing of this Act, any thing herein contained to the contrary notwithstanding.

34. [*Commencement of Act.*]

35. [*Act not to extend to Ireland.*]

THE ADULTERATION OF COFFEE ACT, 1718.
(5 GEO. 1, C. 11.)

* * * * *

23. *Roasters of coffee making use of water, grease, butter, etc., to forfeit* £20.—And whereas divers evil-disposed persons have, at the time or soon after the roasting of coffee, made use of water, grease, butter, or such like materials, whereby the same is rendered unwholesome and greatly increased in weight, to the prejudice of his Majesty's revenue, the health of his subjects, and to the loss of all honest and fair dealers in that commodity: for the prevention whereof, be it enacted by the authority aforesaid, that from and after the five and twentieth day of March one thousand seven hundred and nineteen, if any person or persons whatsoever shall, at the roasting of any coffee, or before or at any time afterwards, make use of water, grease, butter, or any other material whatsoever which will increase the weight or damnify and prejudice the said coffee in its goodness, he, she, or they shall forfeit the sum of twenty pounds for every such offence : and if any trader or dealer in coffee shall knowingly buy or sell any such coffee, he, she, or they shall forfeit the sum of twenty pounds for every such offence, one moiety whereof to his Majesty and the other moiety to him or them that will sue for the same.

THE ADULTERATION OF TEA AND COFFEE ACT, 1724.

(11 GEO. 1, c. 30.)

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5. *Adulterating tea forfeits it and* £100.—. . . From and after the said twenty-fourth day of June one thousand seven hundred and twenty-five, no dealer in tea, or manufacturer or dyer thereof, or pretending so to be, shall counterfeit or adulterate tea, or cause or procure the same to be counterfeited or adulterated, or shall alter, fabricate, or manufacture tea with terra japonica, or with any drug or drugs whatsoever, nor shall mix or cause or procure to be mixed with tea any leaves, other than leaves of tea, or other ingredients whatsoever, on pain of forfeiting and losing the tea so counterfeited, adulterated, altered, fabricated, manufactured, or mixed, and other thing or things whatsoever added thereto, or mixed or used therewith, and also the sum of one hundred pounds.

* * * * *

9. *Penalty on roasters of coffee, mixing butter, etc. therewith,* £100.—And whereas, in order to increase the weight of roasted coffee, whereby to defraud and impose upon such as buy the same, divers evil-disposed persons, at the time or times of roasting such coffee, or soon after, or before the selling thereof, do use or mix, or cause to be used or mixed therewith, or do add or cause to be added thereto, butter, lard, grease, water, or other materials, whereby such coffee is rendered less wholesome, to the prejudice of the health of his Majesty's subjects, and to the loss and injury of all honest and fair dealers therein : for preventing whereof, be it enacted by the authority aforesaid, that from and after the said twenty-fourth day of June one thousand seven hundred and twenty-five, no person or persons whatsoever, either in roasting, or soon after the roasting, or before selling thereof, shall, in order to increase the weight of such coffee, use or add thereto, or mix therewith any butter,

lard, grease, water, or other materials whatsoever, on pain of forfeiting for every such offence the sum of one hundred pounds ; and if any trader or dealer in coffee shall knowingly buy or sell any coffee so mixed, or to which such addition shall be made, every such trader or dealer shall for every such offence forfeit and lose the sum of one hundred pounds.

* * * * *

39. *How these penalties shall be sued for, and divided.*—. . . all fines, penalties, and forfeitures by this Act before imposed, of and concerning the suing for, recovering, and dividing whereof other directions are not herein given, shall be sued for, recovered, levied, or mitigated by such ways, means, and methods as any fine, penalty, or forfeiture is or may be sued for, recovered, levied, or mitigated by any law or laws relating to his Majesty's revenues of excise, or any of them, . . .

THE ADULTERATION OF TEA ACT, 1730.

(4 GEO. 2, C. 14.)

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11. *Penalty for sophisticating tea.*—And whereas several ill-disposed persons do frequently dye, fabricate, or manufacture very great quantities of sloe leaves, liquorish leaves, and the leaves of tea that have been before used, or the leaves of other trees, shrubs, or plants in imitation of tea, and do likewise mix, colour, stain, and dye such leaves, and likewise tea with terra japonica, sugar, molosses, clay, logwood, and with other ingredients, and do sell and vend the same as true and real tea, to the prejudice of the health of his Majesty's subjects, the diminution of the revenue, and to the ruin of the fair trader : for remedy of such frauds and abuses for the future, be it enacted by the authority aforesaid, that from and after the twenty-ninth day of September one thousand seven hundred and thirty-one, if any person or persons, who shall be a dealer in or seller of tea, shall dye, fabricate, or manufacture any sloe

leaves, liquorish leaves, or the leaves of tea that have been used, or the leaves of any other tree, shrub, or plant in imitation of tea, or shall mix, colour, stain, or dye such leaves or tea with terra japonica, sugar, molosses, clay, logwood, or with any other ingredients or materials whatsoever, or shall sell and vend, or utter, offer, or expose to sale, or shall have in his, her, or their custody or possession, any such dyed, fabricated, or manufactured leaves in imitation of tea, or any such coloured, stained, or dyed leaves or tea, mixed with any of the ingredients before mentioned, or with any other ingredients whatsoever, such person or persons shall respectively, for every pound of such leaves so dyed, fabricated, or manufactured in imitation of tea, and for every pound of such mixed, coloured, stained, or dyed leaves or tea, forfeit and pay the sum of ten pounds.

THE ADULTERATION OF TEA ACT, 1776.

(17 GEO. 3, c. 29.)

1. . . . whereas great quantities of sloe leaves, and leaves of ash, elder and other trees, shrubs, and plants are dyed, fabricated and manufactured in imitation of tea by divers persons who sell the same so dyed, fabricated and manufactured to other persons being dealers in tea, smugglers and others, by whom the said manufactured leaves are mixed with tea, and sold and vended as true and real tea, but by reason that the persons so dyeing, fabricating and manufacturing the said leaves are not dealers in or sellers of tea, they are not punishable for the said offences by the laws now in being, whereby such evil practices are increased to a very great degree, to the injury and destruction of great quantities of timber, woods and underwoods, the prejudice of the health of his Majesty's subjects, the diminution of the revenue, the ruin of the fair trader, and to the encouragement of idleness: for remedy whereof, and for the more effectual prevention of such frauds and abuses for the future, be it enacted, and it is hereby enacted by the King's most Excellent Majesty, by and with the advice

and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that from and after the first day of June one thousand seven hundred and seventy-seven, if any person or persons whatsoever, whether he, she or they be a dealer or dealers in or a seller or sellers of tea or not, shall dye, fabricate or manufacture any sloe leaves, liquorish leaves or the leaves of tea that have been used, or the leaves of any ash, elder or other tree, shrub or plant, in imitation of tea, or shall mix, colour, stain or dye any such leaves with terra japonica, copperas, sugar, molasses, clay, logwood, or with any other ingredients or materials whatsoever, or shall sell or vend, utter or offer or expose to sale, or shall have in his, her or their custody or possession any such dyed, fabricated or manufactured leaves in imitation of tea, or any such coloured, stained or dyed leaves, or any leaves that should be dyeing, fabricating or manufacturing in imitation of tea, and shall be thereof convicted upon the oath of one or more credible witness or witnesses, before any one or more of his Majesty's justices of the peace for the county, city, riding, division, district or place wherein such offence shall have been committed, such person or persons shall respectively for every pound of such leaves so dyed, fabricated or manufactured in imitation of tea, or dyeing, fabricating or manufacturing in imitation of tea, and for every pound of such mixed, stained or dyed leaves of tea, forfeit and pay the sum of five pounds ; and upon non-payment thereof such justice or justices shall commit the offender or offenders to the common gaol of the county or place where the offence shall be committed. . . .

2. *Penalty on persons having more than six pounds of any such leaves in their possession and not satisfactorily accounting for the same.*— . . . if any person or persons shall have in his, her or their custody or possession any quantity (exceeding six pounds weight) of sloe leaves, or the leaves of ash, elder or any other tree, shrub or plant, green or manufactured, and shall not prove to the satisfaction of the justice or justices before whom the matter shall be heard that such leaves were

gathered with the consent of the owners of the trees, shrubs or plants from which the said leaves were taken, and that such leaves were gathered for some other use or uses, and not for the purpose of fabricating and manufacturing the same in imitation of tea, and shall be thereof convicted, by the oath of one or more credible witness or witnesses, before any one or more justice or justices of the peace for the county, city, riding, division, district or place where such leaves shall be so found, such person or persons shall respectively for every pound of such green or manufactured leaves so found in his, her or their custody or possession as aforesaid forfeit and pay the sum of five pounds; and upon non-payment thereof such justice or justices shall commit the offender to the common gaol of the county or place where the offence shall be committed. . . .

3. *If any officer of excise, etc., shall make oath before a justice that he suspects any such leaves as aforesaid are concealed, such justice may grant a special warrant for entering any place in search of the same.*—And . . . if any officer or officers of his Majesty's revenue of excise or other person or persons shall have cause to suspect that any such leaves dyed, fabricated or manufactured, or leaves dyeing, fabricating or manufacturing in imitation of tea, or leaves intended so to be dyed, fabricated or manufactured, shall be hid, concealed or lodged in any place whatsoever, then and in such case, upon oath made by such officer or officers or other person or persons before any one or more justice or justices of the peace for the county, city, riding, division, district or place where the same shall be so suspected to be hid, concealed or lodged, setting forth the ground of such his, her or their suspicion, it shall and may be lawful to and for the said justice or justices of the peace respectively before whom such affidavit or affidavits shall be made, if he or they shall judge it reasonable, by special warrant or warrants under his or their respective hand and seal or hands and seals, to authorise and impower such officer or officers, or other person or persons, by day or by night, but if in the night time then in the presence of a constable or other lawful officer of the peace, to enter into all and every such place or places where he or they shall so suspect the said dyed, fabricated or

manufactured, or other the said leaves shall be so hid, concealed or lodged, and to seize and carry away as forfeited all such leaves so dyed, fabricated or manufactured, or dyeing, fabricating or manufacturing, or intended to be so dyed, fabricated or manufactured, which he or they shall so find hid, concealed or lodged, together with all and singular the waggons, carts, boxes, bags, tubs or other vessels or package containing the same : and it shall and may be lawful to and for the said justice or justices so granting the said warrant, or any other justice or justices of the peace for the county, city, riding, division, district or place wherein such seizure shall be made, on proof of the premises, by oath of one or more credible witness or witnesses, by warrant or warrants under his or their hand or seal, hands or seals respectively, to order the said dyed, fabricated or other leaves so seized as aforesaid to be conveyed to some convenient place, and there to be burnt or otherwise destroyed, and to order the said waggons, carts, boxes, bags, tubs or other vessels or package containing the same as aforesaid to be forthwith sold, and the money arising by such sale, after deducting the charges of such seizure and sale, and of the burning or otherwise destroying of the said leaves, to go and be paid, one half to the informer and the other half to the poor of the parish where the offence shall be committed : and if any person or persons whatsoever shall let, obstruct or hinder such officer or officers, or other person or persons having such authority as aforesaid, from entering such places where he or they shall suspect such leaves to be so hid, concealed or lodged, or in seizing, carrying away, burning or otherwise destroying the same, or in seizing, carrying away or selling the said carts, waggons, boxes, bags, tubs or other vessels or package containing the same as aforesaid, the person or persons offending therein shall for every such offence forfeit and lose the sum of fifty pounds each on conviction thereof by the oath of one or more credible witness or witnesses, before one or more justice or justices of the peace for the county, city, riding, division, district or place where such offence shall be committed ; and upon non-payment of the said forfeiture such justice or justices shall commit the offender or offenders to the common

gaol of the county or place where the offence shall be committed . . .

4. *Certain cases in which leaves found concealed shall not be destroyed, etc.*—Provided always . . . that no such green and unmanufactured leaves so found hid, concealed or lodged as aforesaid, shall be burnt or otherwise destroyed if the owner or owners thereof shall within twenty-four hours after such seizure prove to the satisfaction of the justice or justices granting the said warrant for seizing such leaves, or any other justice or justices of the peace for the county, city, riding, division, district or place where the same shall be so seized, that the said green or unmanufactured leaves were gathered with the consent of the owner or owners of the trees, shrubs or plants from which the said leaves were taken, and that the same were so gathered for some other use or uses, and not for the purpose of dyeing, fabricating or manufacturing in imitation of tea as aforesaid ; and if such proof shall within the time aforesaid be made to the satisfaction of the said justice or justices, then the said green or unmanufactured leaves, together with the carriages, vessels and package in which the same shall have been so seized, shall be forthwith restored to the owner or owners thereof by order of such justice or justices.

5. *Leaves to be deemed in possession of occupier of house, etc., where found, who shall be liable to the penalties of this Act, if the same were lodged there with his consent.*—And . . . all such dyed, coloured, stained, fabricated and manufactured, and other leaves aforesaid shall be deemed and adjudged to be in the custody and possession of the occupier or occupiers of the dwelling-houses, out-houses, gardens and lands wherein or whereon the same shall be so found hid, concealed or lodged as aforesaid ; and such occupier or occupiers of the said dwelling-houses, out-houses, gardens and lands shall be liable to all the pains and penalties by this Act inflicted on the person or persons having such dyed, coloured, stained, fabricated or manufactured, and other leaves in his, her or their custody or possession, if it shall be proved to the satisfaction of the justice or justices

before whom the matter shall be heard that such leaves were lodged in such dwelling-houses, out-houses, gardens or lands with the privity or consent of the said occupier or occupiers thereof.

6. *Application of the forfeitures.*—And . . . one moiety of all and every the forfeitures hereinbefore directed to be paid in pursuance of this Act shall go to the informer, and the other moiety to the poor of the parish where such offence shall be committed.

* * * * *

9. *Convictions not to be quashed for want of form, etc.*—And . . . the conviction or convictions of all and every offender and offenders against this Act . . . shall be good and effectual in law to all intents and purposes, and shall not be quashed, set aside or adjudged void or insufficient for want of any form or words whatsoever, nor shall the same be liable to be removed by certiorari into his Majesty's Court of King's Bench, but shall be deemed and taken to be final, to all intents and purposes whatsoever.

THE CUSTOMS AND INLAND REVENUE ACT, 1882.
(45 & 46 VICT. C. 41.)

[*Relating to Imitations of Coffee and Coffee Mixtures.*]

* * * * *

5. *Grant of duty on imitations of coffee and on coffee mixtures.*—(1) There shall be granted and paid to her Majesty, her heirs and successors, upon every quarter of a pound weight of any article or substance prepared or manufactured for the purpose of being in imitation of, or in any respect to resemble, or to serve as a substitute for, coffee or chicory, which is sold or kept for sale in the United Kingdom, and also upon every quarter of a pound weight of any mixture of such article or substance as aforesaid with coffee or chicory which is sold or kept for sale in the United Kingdom, the duty of excise of one halfpenny.

(2) The said duty shall be under the care and management of the Commissioners of Inland Revenue, and shall be denoted by, and collected by means of, an adhesive label or labels to be provided by the said Commissioners.

(4) All the powers, clauses, regulations, and directions contained in any Act relating to duties of excise or to penalties under Excise Acts, and now or hereafter in force, shall be of full force and effect with respect to the said duty and the penalties by this Act imposed, so far as the same are applicable, as fully and effectually as if the same had been herein specially enacted with reference to such duty and penalties.

6. *Conditions under which imitations of coffee and coffee mixtures may be sold.*—(1) No article or substance or mixture upon which a duty of excise is imposed by this Act shall be sold or exposed to sale, or be offered or kept ready for sale, or be delivered out of the custody or possession of any preparer, manufacturer, or importer thereof, except under the following conditions :

(a) The article or substance or mixture shall be placed in packets, each containing one quarter of a pound or any number of quarters of a pound :

(b) Each such packet shall have affixed thereto a label or labels (which shall not have been before used) denoting the proper amount of duty payable upon such packet according to the weight thereof :

(c) Such label or labels shall be affixed so that the whole thereof shall adhere to the packet, and so that the packet cannot be opened without tearing or destroying the label or labels :

(d) Where more than one label is affixed to any packet the labels shall be affixed so that every label shall be wholly or partially visible.

Provided that each such packet containing, or purporting to contain, coffee with any other article or substance mixed therewith shall have affixed thereto a label, in manner hereinbefore provided, denoting in

letters of not less size than the largest letters affixed to or imprinted on such label the proper name of the several articles or substances of which such mixture is composed.

(2) If any person shall sell or expose to sale, or offer or keep ready for sale, or deliver out of his custody or possession, any such article or substance or mixture as aforesaid, otherwise than in conformity with the above conditions, he shall forfeit the same, and incur a fine of twenty pounds.

(3) In any proceeding for recovery of the fine imposed by this section, if any question shall arise whether any label shall have been before used, proof that such label had not been before used shall lie upon the defendant.

(4) Provided that nothing in this Act contained shall in any way affect any Act or Acts now in force relating to the adulteration of food.

* * * * *

THE ADULTERATION OF HOPS ACT, 1733.
(7 GEO. 2, C. 19.)

* * * * *

2. *Five pound penalty on every hundredweight of sophisticated hops.*— . . If any person or persons in Great Britain or Ireland shall . . . mix with or put into any quantity of hops any drug or ingredient, or other thing whatsoever, to alter the colour or scent thereof, every person so offending, and being thereof lawfully convicted by the oath of one or more witness or witnesses, before one or more justice or justices of the peace of the county or place where the offence shall be committed, shall for every such offence forfeit and pay the sum of five pounds for every hundred weight thereof.

* * * * *

THE ADULTERATION OF SEEDS ACT, 1869.

(32 & 33 VICT. C. 112.)

An Act to prevent the Adulteration of Seeds.

[11th August 1869.]

1. *Title of Act.*—This Act may be cited as the Adulteration of Seeds Act, 1869.

2. *Interpretation of terms.*—In this Act—

The term "to kill seeds" means to destroy by artificial means the vitality or germinating power of such seeds :

The term "to dye seeds" means [*to give to seeds by any process of colouring, dyeing, sulphur smoking, or other artificial means the appearance of seeds of another kind*].

The words "to apply to seeds any process of colouring, dyeing, or sulphur smoking" are substituted for the words italicised and enclosed in brackets by the Adulteration of Seeds Act, 1878, *post*.

3. *Offences in relation to seeds.*—Every person who, with intent to defraud or to enable another person to defraud, does any of the following things ; that is to say,

(1) Kills or causes to be killed any seeds ; or,

(2) Dyes or causes to be dyed any seeds ; or

(3) Sells or causes to be sold any killed or dyed seeds,

shall be punished as follows ; that is to say,

(1) For the first offence he shall be liable to a penalty not exceeding five pounds :

(2) For the second and any subsequent offence he shall be liable to pay a penalty not exceeding fifty pounds :

Moreover, in every case of a second or any subsequent offence against this Act, it shall be lawful for the court, besides inflicting upon the person guilty of such offence the punishment directed by this Act, to order the offender's name, occupation, place of abode, and place of business, and particulars of his punishment under this Act, to be published, at the expense of such offender, in such newspaper or newspapers, or in such other manner as the court may think fit to prescribe.

4. *Summary proceedings.*—Any forfeiture or penalty under this Act may be recovered, enforced, and applied as follows :

In England, before two justices of the peace in manner directed by the Act of the session of the eleventh and twelfth years of the reign of her present Majesty, chapter forty-three, intituled "An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders," and any Act amending the same :

In Scotland, in manner directed by the Summary Procedure Act, 1864, and any Act amending the same, or by any police or other Act for the time being in force in any place, and providing for the recovery of forfeitures and penalties :

In Ireland, in manner directed by the Petty Sessions (Ireland) Act, 1851, and any Act amending the same ; and in Dublin by the Acts regulating the powers of justices of the peace, or of the police of Dublin Metropolis.

Any jurisdiction by this section authorised to be exercised by two justices may be exercised by any of the following magistrates within their respective jurisdictions ; that is to say,

As to England, by any metropolitan police magistrate sitting alone at a police court or other appointed place, or by the Lord Mayor or any alderman of the city of London, sitting alone or with others within the said city :

As to Scotland, by the sheriff or sheriff substitute, or by any police magistrate of a burgh :

As to Ireland, by any one or more divisional magistrate of police in the police district of Dublin, and elsewhere by one or more justice or justices of the peace in petty sessions.

The term "court" shall include the justices, magistrate, or other person or persons before whom proceedings may be had for the recovery of any forfeiture or penalty.

5. *Intent to defraud particular person need not be alleged.*—In any proceeding for any offence against this Act, it shall be sufficient to allege that the party accused did the act charged

with intent to defraud or to enable some other person to defraud, without alleging an intent to defraud any particular person or an intent to enable any particular person to defraud any particular person ; and on the trial of any such offence it shall not be necessary to prove an intent to defraud any particular person or an intent to enable any particular person to defraud any particular person, but it shall be sufficient to prove that the party accused did the act charged with an intent to defraud or with intent to enable some other person to defraud, or with the intent that any other person might be enabled to defraud.

6. *Appeal from summary conviction.*—In England where the person who is convicted under this Act thinks himself aggrieved by the conviction, such person may appeal to the next court of general or quarter sessions. . . .

In Scotland and Ireland, in like cases as in England, an appeal shall lie in manner in that behalf provided by the law of Scotland and of Ireland respectively.

A summary conviction under this Act in England shall not be quashed for want of form or be removed by certiorari : . . .

7. *Limiting time for proceedings under this Act.*—Every complaint under this Act against any person in respect of selling or causing to be sold any killed or dyed seeds shall be commenced within twenty-one days from the time of the commission of the offence complained of.

8. *Costs of unreasonable prosecution.*—Whenever any complaint is preferred against any person under this Act, and the court upon the hearing thereof determines that it is not bonâ fide made upon reasonable and probable cause, it shall be lawful for the court in its discretion to direct and order that the prosecutor or other person by whom or at whose instance such complaint has been preferred shall pay unto the accused person the just and reasonable costs, charges, and expenses, to be settled by the court, of such accused person and his witnesses, occasioned by or consequent upon the preferring of such complaint ; and upon non-payment of such costs, charges,

and expenses within fourteen days after the date of such direction and order, it shall be lawful for the court to enforce payment of the same in the same manner as if such costs were a penalty incurred by the person liable to pay the same.

9. *Other remedies not to be affected.*—Nothing in this Act contained shall prejudice or affect the power of proceeding by indictment or libel in respect of any offence herein provided for, nor shall any proceeding, conviction, or judgment to be had or taken under the provisions hereof against any person prevent, lessen or impeach any remedy by civil process at law or in equity which any party aggrieved by any offence against this Act might have had if this Act had not been passed.

THE ADULTERATION OF SEEDS ACT, 1878.

(41 & 42 VICT. c. 17.)

An Act to amend the Adulteration of Seeds Act, 1869.

[27th May 1878.]

1. *Short title.*—This Act may be cited as the Adulteration of Seeds Act, 1878, and shall be construed as one with the Adulteration of Seeds Act, 1869, and together with that Act may be cited as the Adulteration of Seeds Acts, 1869 and 1878.

2. *Amendment of* 32 & 33 *Vict. c.* 112, *s.* 2.—From and after the passing of this Act, section two of the Adulteration of Seeds Act, 1869, shall be read as if, instead of the words "the term 'to dye seeds' means to give to seeds by any process of colouring, dyeing, sulphur smoking, or other artificial means the appearance of seeds of another kind," there were therein inserted the words "the term 'to dye seeds' means to apply to seeds any process of colouring, dyeing, or sulphur smoking."

THE FERTILISERS AND FEEDING STUFFS ACT, 1893 (*a*).

(56 & 57 VICT. c. 56.)

An Act to amend the Law with respect to the sale of Agricultural Fertilisers and Feeding Stuffs. [22nd September 1893.]

1. *Warranty on sale of fertiliser.*—(1) Every person who sells for use as a fertiliser of the soil any article manufactured in the United Kingdom or imported from abroad shall give to the purchaser an invoice stating the name of the article and whether it is an artificially compounded article or not, and what is at least the percentage of the nitrogen, soluble and insoluble phosphates, and potash, if any, contained in the article, and this invoice shall have effect as a warranty by the seller of the statements contained therein.

(2) For the purposes of this section an article shall be deemed to be manufactured if it has been subjected to any artificial process.

(3) This section shall not apply to a sale where the whole amount sold at the same time weighs less than half a hundredweight.

2. *Warranty on sale of feeding stuff.*—(1) Every person who sells for use as food for cattle any article which has been artificially prepared shall give to the purchaser an invoice stating the name of the article and whether it has been prepared from one substance or seed, or from more than one substance or seed, and this invoice shall have effect as a warranty by the seller of the statements contained therein.

(2) Where any article sold for use as food for cattle is sold under a name or description implying that it is prepared from any particular substance, or from any two or more particular

(*a*) A departmental committee was appointed in 1903 by the President of the Board of Agriculture to inquire into the working of this Act, and to report whether further legislation was desirable.

substances, or is the product of any particular seed, or of any two or more particular seeds, and without any indication that it is mixed or compounded with any other substance or seed, there shall be implied a warranty by the seller that it is pure, that is to say, is prepared from that substance or those substances only, or is a product of that seed or those seeds only.

(3) On the sale of any article for use as food for cattle there shall be implied a warranty by the seller that the article is suitable for feeding purposes.

(4) Any statement by the seller of the percentages of nutritive and other ingredients contained in any article sold for use as food for cattle, made after the commencement of this Act in an invoice of such article or in any circular or advertisement descriptive of such article, shall have effect as a warranty by the seller.

3. *Penalties for breach of duty by seller.*—(1) If any person who sells any article for use as a fertiliser of the soil or as food for cattle commits any of the following offences, namely :

(a) Fails without reasonable excuse to give, on or before or as soon as possible after the delivery of the article, the invoice required by this Act ; or

(b) Causes or permits any invoice or description of the article sold by him to be false in any material particular to the prejudice of the purchaser ; or

(c) Sells for use as food for cattle any article which contains any ingredient deleterious to cattle, or to which has been added any ingredient worthless for feeding purposes and not disclosed at the time of the sale,

he shall, without prejudice to any civil liability, be liable, on summary conviction, for a first offence to a fine not exceeding twenty pounds, and for any subsequent offence to a fine not exceeding fifty pounds.

(2) In any proceeding for an offence under this section it shall be no defence to allege that the buyer, having bought only for analysis, was not prejudiced by the sale.

(3) A person alleged to have committed an offence under this section in respect of an article sold by him shall be entitled

to the same rights and remedies, civil or criminal, against the person from whom he bought the article as are available to the person who bought the article from him, and any damages recovered by him may, if the circumstances justify it, include the amount of any fine and costs paid by him on conviction under this section, and the costs of and incidental to his defence on such conviction.

4. *Power to appoint analysts.*—(1) The Board of Agriculture shall appoint a chief agricultural analyst (hereafter referred to as the chief analyst), who shall have such remuneration out of moneys provided by Parliament as the Treasury may assign. The chief analyst shall not while holding his office engage in private practice.

(2) Every county council shall, and the council of any county borough may, appoint or concur with another council or other councils in appointing for the purposes of this Act a district agricultural analyst (hereafter referred to as a district analyst) for its county or borough, or a district comprising the counties or boroughs of the councils so concurring. The remuneration of any such district analyst shall be provided by the council, or in the case of a joint appointment by the respective councils in such proportions as they may agree, and shall be paid, in the case of a county, as general expenses, and, in the case of a county borough, out of the borough fund or borough rate. The appointment shall be subject to the approval of the Board of Agriculture. Provided that no person shall while holding the office of district analyst engage in any trade, manufacture, or business connected with the sale or importation of articles used for fertilising the soil or as food for cattle.

5. *Power for purchaser to have fertiliser or feeding stuff analysed.*—(1) Every buyer of any article used for fertilising the soil or as food for cattle shall, on payment to a district analyst of a fee sanctioned by the body who appointed the analyst, be entitled, within ten days after delivery of the article to the buyer or receipt of the invoice by the buyer, whichever is later, to have the article analysed by the analyst,

and to receive from him a certificate of the result of his analysis.

(2) Where a buyer of an article desires to have the article analysed in pursuance of this section, he shall, in accordance with regulations (*a*) made by the Board of Agriculture, take three samples of the article, and shall in accordance with the said regulations cause each sample to be marked, sealed, and fastened up, and shall deliver or send by post one sample with the invoice or a copy thereof to the district analyst, and shall give another sample to the seller, and shall retain the third sample for future comparison : Provided that a district analyst, or some person authorised by him in that behalf with the approval of the body who appointed the analyst, shall, on request either by the buyer or by the seller, and on payment of a fee sanctioned by the said body, take the samples on behalf of the buyer.

(3) The certificate (*b*) of the district analyst shall be in such form and contain such particulars as the Board of Agriculture direct, and every district analyst shall report to the Board as they direct the result of any analysis made by him in pursuance of this Act.

(4) If the seller or the buyer objects to the certificate of the district analyst, one of the samples selected, or another sample selected in like manner, may, at the request of the seller, or, as the case may be, the buyer, be submitted with the invoice or a copy thereof to the chief analyst, and the seller, or, as the case may be, the buyer, shall, on payment of a fee sanctioned by the Treasury, be entitled to have the sample analysed by the chief analyst, and to receive from him a certificate of the result of his analysis.

(5) At the hearing of any civil or criminal proceeding with respect to any article analysed in pursuance of this section, the production of a certificate of the district analyst, or if a sample has been submitted to the chief analyst, then of the chief analyst, shall be sufficient evidence of the facts therein stated, unless the defendant or person charged requires that the analyst be called as a witness.

(6) The costs of and incidental to the obtaining of any analysis in pursuance of this section shall be borne by the seller or the buyer in accordance with the results of the analysis, and shall be recoverable as a simple contract debt.

(*a*) The regulations issued by the Board of Agriculture under this section are given *post*, p. 233.

(*b*) Four forms of certificates are given on pp. 227—232, as issued by the Board in pursuance of their powers under the Act.

6. *Penalty for tampering.*—If any person knowingly and fraudulently—

(a) tampers with any parcel of fertiliser or feeding stuff so as to procure that any sample of it taken in pursuance of this Act does not correctly represent the contents of the parcel ; or

(b) tampers with any sample taken under this Act ;

he shall be liable on summary conviction to a fine not exceeding twenty pounds, or to imprisonment for a term not exceeding six months.

7. *Prosecutions and appeals.*—(1) A prosecution for an offence under this Act may be instituted either by the person aggrieved, or by the council of a county or borough, or by any body or association authorised in that behalf by the Board of Agriculture, but in the case of an offence under section three shall not be instituted by the person aggrieved or by any body or association except on a certificate by the Board of Agriculture that there is reasonable ground for the prosecution.

(2) Any person aggrieved by a summary conviction under this Act may appeal to a court of quarter sessions.

8. *Construction and application.*—(1) For the purposes of this Act the expression "cattle" shall mean bulls, cows, oxen, heifers, calves, sheep, goats, swine, and horses ; and the expressions "soluble" and "insoluble" shall respectively mean soluble and insoluble in water.

(2) This Act shall apply to wholesale as well as retail sales.

9. *Application to Scotland.*—In the application of this Act to Scotland—

(1) The expression "council of any county borough" shall mean the magistrates and town council of a burgh, and the duties and powers of councils of counties and county burghs shall be performed and be exerciseable in a county by the county councils or district committees thereof, and in a burgh by the magistrates and town council, and the remuneration of district analysts appointed under this Act shall be paid in the case of a county out of the consolidated rate, and in the case of a burgh out of the police or burgh general assessment.

(2) The expression "burgh" means a burgh which returns or contributes to return a member to Parliament, not being a burgh to which section fourteen of the Local Government (Scotland) Act, 1889 (52 & 53 Vict. c. 50), applies.

(3) Penalties for offences under this Act may be recovered summarily before the sheriff in manner provided by the Summary Jurisdiction Acts, and any person aggrieved by a summary conviction may appeal therefrom in accordance with the provisions of those Acts.

10. *Application to Ireland.*—For the purposes of the execution of this Act in Ireland, inclusive of the appointment of a chief agricultural analyst, the Lord Lieutenant acting by the advice of the Privy Council shall be substituted for the Board of Agriculture, and the district analysts shall be the analysts appointed for counties and boroughs in Ireland under the Sale of Food and Drugs Act, 1875, and the additional remuneration of such analysts for their duties under this Act shall be provided in manner directed by the said Act of 1875 and any Act amending the same.

11. *Commencement of Act.*—This Act shall come into operation on the first day of January, one thousand eight hundred and ninety-four.

12. *Short title.*—This Act may be cited as the Fertilisers and Feeding Stuffs Act, 1893.

THE FERTILISERS AND FEEDING STUFFS ACT, 1893.

FORMS OF CERTIFICATE OF DISTRICT ANALYST.

BY THE BOARD OF AGRICULTURE.

The Board of Agriculture, in pursuance of the provisions of the Fertilisers and Feeding Stuffs Act, 1893, do hereby direct as follows :

1. The certificate of a district analyst under the above-mentioned Act is to be in such one of the forms set forth in the schedule hereto annexed as may be applicable to the case, and to contain the particulars therein mentioned, with such variations as the circumstances require.

2. This direction is to take effect from and after the first day of January, one thousand eight hundred and ninety-four, and to remain in force until altered or revoked by the Board of Agriculture.

In witness whereof the Board of Agriculture have hereunto set their official seal this twenty-third day of December, one thousand eight hundred and ninety-three.

(L.S.) T. H. ELLIOTT, *Secretary.*

SCHEDULE.

Forms.

FORM A.

Certificate for Fertiliser where the Samples are not taken by the District Analyst.

I, the undersigned district analyst for the (*a*) , in pursuance of the provisions of the Fertilisers and Feeding Stuffs Act, 1893, do hereby certify that I received on the day of 19 , from (*b*) a sample of (*c*) for analysis which was duly sealed, and fastened up and marked (*d*) , and was accompanied by the annexed (*e*) (copy of an) invoice, and that at the request of (*f*) , I have analysed the same and declare the result of my analysis to be as follows :

I am of opinion that the said sample contained the parts as under :

Nitrogen - - - -		per cent.
(*g*) Phosphates	Soluble - -	per cent.
	Insoluble -	per cent.
(*h*) Potash - - - -		per cent.
(*i*)		

As witness my hand this day of , 19 .

A. B.,
at .

(*a*) Here insert the name of the county, borough, or district.

(*b*) Here insert the name of the person delivering the sample, and if so, "by post," and also add, if applicable, "the person duly authorised by me to take samples."

(*c*) Here insert the name of the article as stated on the sample.

(*d*) Here insert the distinguishing mark on the sample, consisting of initials and a number.

(*e*) The invoice or copy invoice will be initialed by the analyst for purposes of identification and annexed to this certificate.

(*f*) Here insert name of the buyer requesting the analysis.

(*g*) The phosphates in both cases to be given according to the trade practice in terms of tribasic phosphate of lime, $Ca_3 (PO_4)_2$.

(*h*) The potash to be given in terms of potassium oxide, K_2O.

(*i*) If the invoice or description of the article be false in any material particular to the prejudice of the buyer, here state in what respect.

FORM B.

Certificate for Fertiliser where the Samples are taken by the District Analyst.

I, the undersigned district analyst for the (*k*) , in pursuance of the provisions of the Fertilisers and Feeding Stuffs Act, 1893, do hereby certify as follows :

(a) That on the day of , 19 , at the request of (*l*) , and in the presence of (*m*) , I took, in accordance with the Fertilisers and Feeding Stuffs Regulations, 1893, three samples of a parcel of (*n*) , lying in (*o*) , and identified by the said (*p*) , as the fertiliser sold under the invoice, (a copy of) which was supplied to me by the said (*q*) , and is annexed (*r*) to this certificate.

(b) That on the said day of , 19 , I delivered to the said (*s*) [by post] one of the said samples marked (*t*) , and to the said (*u*) [by post] another of the said samples marked (*t*) .

(*k*) Here insert name of the county, borough, or district.

(*l*) Here insert name of person requesting analyst to take the samples.

(*m*) Here insert names of buyer and seller, or their representatives, present.

(*n*) Here insert name of article.

(*o*) Here insert description of place where the samples are taken.

(*p*) Here insert name of person identifying the parcel.

(*q*) Here insert name of person supplying the invoice or copy invoice.

(*r*) The invoice or copy invoice will be initialed by the analyst for purposes of identification and annexed to this certificate.

(*s*) Here insert name of buyer.

(*t*) Here insert the distinguishing mark on the sample in question consisting of initials and a number.

(*u*) Here insert name of seller.

(c) That at the request of the said (*x*) I have analysed the remaining sample, and declare the result of my analysis to be as follows :

I am of opinion that the said sample contained the parts as under :

	Nitrogen - - - - -	per cent.
(*y*)	Phosphates { Soluble - -	per cent.
	{ Insoluble -	per cent.
(*z*)	Potash - - - - -	per cent.
(*a*)		

As witness my hand this day of 19 .

A. B.,
at .

Form C.

Certificate for Feeding Stuff where the Samples are not taken by the District Analyst.

I, the undersigned district analyst for the (*b*) , in pursuance of the provisions of the Fertilisers and Feeding Stuffs Act, 1893, do hereby certify that I received on the day of 19 , from (*c*) a sample of (*d*) for analysis, which was duly sealed, and fastened up, and

(*x*) Here insert name of buyer.

(*y*) The phosphates in both cases to be given according to the trade practice in terms of tribasic phosphate of lime, $Ca_3 (PO_4)_2$.

(*z*) The potash to be given in terms of potassium oxide, K_2O.

(*a*) If the invoice or description of the article be false in any material particular to the prejudice of the buyer, here state in what respect.

(*b*) Here insert name of county, borough, or district.

(*c*) Here insert name of person delivering sample, and, if so, "by post," and also add, if applicable, "the person duly authorised by me to take samples."

(*d*) Here insert the name of article as stated on the sample.

marked (*e*) , and was accompanied by the annexed (*f*) (copy of an) invoice, and also by the annexed (*f*) circular and advertisement, and that at the request of the said (*g*) I have analysed the same and declare the result of my analysis to be as follows :

I am of opinion that the sample (*h*)

As witness my hand this day of 19 .

A. B.,

at .

(*e*) Here insert the distinguishing mark on the sample, consisting of initials and a number.

(*f*) The invoice, or copy invoice, and any circular or advertisement given to the analyst, will be initialed by the analyst for purposes of identification and annexed to this certificate.

(*g*) Here insert name of the buyer requesting the analysis.

(*h*) Here state, as the case may be :

(A) Whether the composition of the article agrees with the statements contained in the invoice, and with the name or description under which the article is sold, so far as the same implies that it is prepared, from one particular substance or seed only, or from two or more particular substances or seeds only ; and, if not, in what respect.

(B) Whether the article is suitable for feeding purposes for cattle as defined by the Act ; and, if not, in what respect.

(C) The percentages of nutritive and other ingredients present, when any statement of such percentages is contained in the invoice, or in any such circular or advertisement as above mentioned.

(D) In what respect, if any, the invoice or the description of the article contained in any such circular or advertisement, is false in any material particular to the prejudice of the buyer.

(E) Whether the article contains any ingredient deleterious to cattle as defined by the Act, or any ingredient worthless for feeding purposes not disclosed in the invoice ; and, if in either case such be present, then to what extent.

(F) Where separate samples are taken of the portion of a feeding stuff which is mouldy, sour, or otherwise unsuitable for feeding purposes, or of cakes full of hard lumps or having cotton or hair attaching to them, and also of the residue of the feeding stuff, state the estimated proportion of the feeding stuff represented by the sample to which this certificate relates.

Form D.

Certificate for Feeding Stuff where the Samples are taken by the District Analyst.

I, the undersigned district analyst for the (*i*) in pursuance of the provisions of the Fertilisers and Feeding Stuffs Act, 1893, do hereby certify as follows :

(a) That on the day of 19 , at the request of (*k*) and in the presence of (*l*) I took, in accordance with the Fertilisers and Feeding Stuffs Regulations, 1893, three samples of a parcel of (*m*) lying in (*n*) and identified by the said (*o*) as the feeding stuff sold under the invoice (a copy of) which was supplied to me by the said (*p*) and is annexed (*q*) to this certificate [and also as the feeding stuff referred to in the circular and advertisement supplied to me by the said (*r*) and also annexed (*q*) to this certificate].

(b) That on the said day of 19 , I delivered to the said (*r*) [by post] one of the said samples marked (*s*) and to the said (*t*) [by post] another of the said samples marked (*s*) .

(*i*) Here insert name of the county, borough, or district.

(*k*) Here insert name of person requesting analyst to take the samples.

(*l*) Here insert names of buyer and seller, or their representatives, present.

(*m*) Here insert name of article.

(*n*) Here insert description of place where the samples are taken.

(*o*) Here insert name of person identifying the parcel.

(*p*) Here insert name of person supplying the invoice or copy invoice.

(*q*) The invoice or copy invoice, and any circular or advertisement given to the analyst, will be initialed by the analyst for purposes of identification, and annexed to this certificate.

(*r*) Here insert name of buyer.

(*s*) Here insert the distinguishing mark on the sample in question, consisting of initials and a number.

(*t*) Here insert name of seller.

(c) That at the request of the said (*r*) I have analysed the remaining sample and declare the result of my analysis to be as follows :

I am of opinion that the sample (*u*) .

As witness my hand this day of 19 .

A. B.,

at .

(*u*) Here state, as the case may be :—

(A) Whether the composition of the article agrees with the statements contained in the invoice, and with the name or description under which the article is sold, so far as the same implies that it is prepared from one particular substance or seed only, or from two or more particular substances or seeds only ; and, if not, in what respects.

(B) Whether the article is suitable for feeding purposes for cattle as defined by the Act ; and, if not, in what respect.

(C) The percentages of nutritive and other ingredients present, when any statement of such percentages is contained in the invoice, or in any such circular or advertisement as above mentioned.

(D) In what respect, if any, the invoice or the description of the article contained in any such circular or advertisement, is false in any material particular to the prejudice of the buyer.

(E) Whether the article contains any ingredient deleterious to cattle as defined by the Act, or any ingredient worthless for feeding purposes not disclosed in the invoice ; and, if in either case such be present, then to what extent.

(F) Where separate samples are taken of the portion of a feeding stuff which is mouldy, sour, or otherwise unsuitable for feeding purposes, or of cakes full of hard lumps or having cotton or hair attaching to them, and also of the residue of the feeding stuff, state the estimated proportion of the feeding stuff represented by the sample to which this certificate relates.

FERTILISERS AND FEEDING STUFFS REGULATIONS, 1897.

By the Board of Agriculture.

The Board of Agriculture, in pursuance of the provisions of the Fertilisers and Feeding Stuffs Act, 1893, do hereby make the following regulations as to samples to be taken under the said Act.

1. *Commencement.*—These regulations are to take effect on the first day of July one thousand eight hundred and ninety-seven and to remain in force until altered or revoked by the Board of Agriculture.

2. *Definitions.*—In these regulations :

"Authorised representative" means any person authorised by the district analyst to take samples, with the approval of the body who appointed the district analyst.

"Buyer" and "seller" include their respective agents.

"Fertiliser" means any article sold for use as a fertiliser of the soil, which has been subjected to any artificial process in the United Kingdom or imported from abroad.

"Feeding stuff" means any article sold for use as food for cattle which has been artificially prepared.

Other terms have the same meaning and scope as in the above-mentioned Act.

3. *Appointment of agent.*—An appointment of an agent by the buyer may be in the Form A. set forth in the schedule hereto, or in a form to the like effect ; and the provisions of these regulations relating to a buyer shall apply to an agent appointed by the buyer for the purposes of the above-mentioned Act.

4. *Proceedings by buyer to procure samples.*—When the buyer of not less than half a hundredweight of a fertiliser, or of any quantity of a feeding stuff, desires to have the same analysed

in pursuance of the fifth section of the above Act, he is, within ten days after delivery of the article to him or receipt of the invoice, whichever is later, either to give notice to the seller that he intends to take samples of the article himself, or to give notice in writing to the district analyst or authorised representative, stating that he desires that the samples shall be taken by the district analyst or authorised representative, as the case may be.

5. *Regulations as to samples taken by buyer.*—When the buyer intends to take the samples himself he is to give at least three days' notice in writing of such intention to the seller, with particulars as to the place, day, and hour of sampling. If the seller does not attend, the samples are to be taken in the presence of a witness, who is to initial each sample.

6. The buyer is forthwith to deliver or send by post to the district analyst, one of such samples, with the invoice or a copy thereof, and also, in the case of a feeding stuff, any circular or advertisement of the seller descriptive of the article to be analysed, which the buyer may wish the district analyst to consider in making his analysis and giving his certificate.

7. One of the remaining samples is to be delivered or sent by post to the seller, and the other is to be retained by the buyer.

8. *Regulations as to samples taken by district analyst or authorised representative.*—When the buyer or the seller desires that the samples shall be taken by the district analyst or authorised representative, he is to give notice in writing to that effect to the district analyst or authorised representative, as the case may be. Such notice is to contain the names and addresses of the buyer and the seller, and such particulars as may be necessary to enable the district analyst or authorised representative to identify the article to be analysed, and may be in the Form B. set forth in the schedule hereto, or in a form to the like effect. A copy of any such notice given by the seller is to be sent at the same time to the buyer.

9. The district analyst or authorised representative, as the case may be, is to give at least three days' notice in writing to the seller and to the buyer, as to the place, day, and hour of sampling, to enable them to be present at such sampling, if they so desire.

10. One of the samples taken by the district analyst or authorised representative is to be retained for the use of the district analyst in making this analysis, another delivered or sent to the seller, and the third delivered or sent to the buyer.

11. Any notice or sample required by these regulations to be given or sent by the district analyst or authorised representative to the buyer or the seller, may be sent by post to the respective names and addresses stated in the notice to be given under Article 8.

12. The district analyst or authorised representative, as the case may be, is, at or before the time of sampling, to be supplied by the buyer with the invoice or a copy thereof, and also in the case of a feeding stuff, with any circular or advertisement of the seller descriptive of the article to be analysed, which the buyer may wish the district analyst to consider in making his analysis and giving his certificate.

13. The district analyst or authorised representative is to provide any receptacle or other thing required by him for the samples.

14. *General regulations for taking samples.* (*a*) *Fertilisers.*— When the fertiliser is delivered in bags or other packages, a number of bags or packages are to be selected as follows, viz. :

Not less than two bags or packages where the quantity does not exceed one ton ;

Not less than three bags or packages where the quantity does not exceed two tons ;

Not less than four bags or packages where the quantity does not exceed three tons ;

and one additional bag or package for every additional ton or part of a ton ; provided that in no case need more than ten bags or packages be selected.

15. The selected bags or packages are to be emptied separately on a clean and dry stone or wooden floor, worked up with a spade, and one spadeful from each set aside. The separate spadefuls are then to be thoroughly mixed and any lumps broken up by the hand or spade. From this mixture three samples, each from half a pound to one pound in weight, are to be taken and carefully and securely packed.

16. When the fertiliser is delivered in bulk, then, in like manner, portions are to be taken from different parts of the fertiliser, and thoroughly mixed together, and the samples taken from a portion of such mixture.

17. When the fertiliser consists of bulky material, uneven in character and likely to get matted together, such as shoddy, wool, refuse, hair, etc., portions are to be taken from the selected bags or packages, or from different parts of the fertiliser, if in bulk, the matted portions torn up, and the whole mixed as above directed, but no sample is to be less than one pound in weight.

18. As an alternative method, where neither the seller nor the buyer signifies objection thereto, samples of a fertiliser delivered in bags or other packages may be taken by a sampling pale or spear or pipe or tube which shall not be less than twenty-four inches in length, and two inches in diameter. The total quantity so abstracted for the samples shall be not less than five pounds where the quantity of the fertiliser does not exceed five tons, and not less than ten pounds where the quantity exceeds five tons and shall be drawn from at least double the number of bags or packages required to be selected under Regulation 14.

19. (*b*) *Feeding stuffs.*—When the feeding stuff is in the state of meal or grain it is to be sampled in the same manner

as prescribed for fertilisers. When the feeding stuff is in the state of cake, a number of cakes are to be selected as follows :

Not less than—

3 cakes where the quantity does not exceed 1 ton.
5 ,, ,, ,, 5 tons.
10 ,, ,, exceeds 5 tons.

20. The selected cakes are to be broken into small pieces such as could be passed through a half-inch sieve. These pieces are to be thoroughly mixed, and from the mixture three samples, each not less than one pound in weight, are to be taken.

21. In the case of a feeding stuff, if any appreciable portion be mouldy, sour, or otherwise unsuitable for feeding purposes, or if cakes be full of hard lumps, or have cotton or hair attaching to them, separate samples are to be taken of such portion or cakes and of the residue of the feeding stuff. An estimate is to be formed as to the proportion of the feeding stuff represented by each sample.

22. When the feeding stuff is in a fluid or semi-fluid condition, three packages are to be selected, and a portion taken from each. The several portions are then to be well mixed together in a clean vessel and three samples taken therefrom as in other cases.

23. *General directions.*—In every case the sampling is to be done as quickly as is possible consistently with due care, and the material is not to be allowed to be exposed any longer than is absolutely necessary.

24. The object of the person taking the samples is to obtain samples fairly representing the bulk from which they are drawn, and therefore no bag, package, or cake is to be selected which has apparently been damaged while in the possession of the buyer.

25. Each sample is to be packed in a dry, clean bottle or jar, or (except in the case of a fertiliser) in a dry clean tin, or in

some other suitable manner so that the original composition of the fertiliser or feeding stuff may be preserved.

26. The samples are to be so packed and secured that they cannot be tampered with, and are to be sealed and initialed by the person taking the sample. They may also be sealed by the buyer and the seller, if present and so desiring. Each sample is to be marked with the name of the article, the date and the place of the sampling, and with some distinguishing number.

27. *Regulations as to samples sealed by seller and buyer.*—Where any samples are taken in the presence of, and sealed by, the seller as well as the buyer, such samples are to be deemed, as between the buyer and seller, to have been taken in accordance with these Regulations.

28. *Revocation.*—All Regulations heretofore made by the Board of Agriculture in pursuance of the provisions of the Fertilisers and Feeding Stuffs Act, 1893, are hereby revoked as from the time at which these Regulations take effect.

29. *Short title.*—These Regulations may be cited as the Fertilisers and Feeding Stuffs Regulations, 1897.

In witness whereof the Board of Agriculture have hereunto set their official seal this first day of June, one thousand eight hundred and ninety-seven.

(L.S.) T. H. ELLIOTT,
Secretary.

SCHEDULE.

FORM A.

Appointment by Buyer of Agent for purposes of the Fertilisers and Feeding Stuffs Act, 1893.

I, A. B. of hereby appoint C. D. of *or* the secretary for the time being of the Association, [*or as the case may be*] to do on my behalf all things necessary for the purpose of

obtaining an analysis under the Fertilisers and Feeding Stuffs Act, 1893, of the fertiliser [*or* feeding stuff] bought by me under an invoice, a copy of which is annexed.

FORM B.

Request that the Samples may be taken by District Agricultural Analyst.

To, [*here insert name and address of the district agricultural analyst*].

I, A. B., of hereby request that the necessary samples for the purposes of the Fertilisers and Feeding Stuffs Act, 1893, of the undermentioned fertiliser [*or* feeding stuff] may be taken by you or by some person duly authorised by you, for which I enclose the prescribed fee of shillings.

Name and Address of Buyer.	Name and Address of Seller.	Description of Fertiliser or Feeding Stuff identifying the Parcel.	Place where the Fertiliser or Feeding Stuff can be sampled.

N.B.—A buyer giving this notice should send therewith the invoice or a copy thereof, and also, in the case of a feeding stuff, any circular or advertisement of the seller descriptive of the article to be analysed, which the buyer may wish the analyst to consider in making his analysis and giving his certificate.

A seller giving this notice is at the same time to send a copy thereof to the buyer.

THE OIL IN TOBACCO ACT, 1900.

(63 & 64 VICT. c. 35.)

An Act to restrict the amount of Oil in manufactured Tobacco.

[6th August 1900.]

1. *Limitation of quantity of oil in tobacco.*—(1) If any manufacturer of tobacco has in his custody or possession fit for sale or tenders for drawback, or if any dealer in or retailer of tobacco has in his custody or possession, any tobacco containing a greater proportion of oil than four per cent. he shall incur an excise penalty of fifty pounds and the tobacco shall be forfeited.

(2) In calculating the proportion of oil for the purpose of this section any fatty or oily substance which is naturally present in the tobacco shall be included as oil.

(3) In this section the expression "fit for sale" has the meaning assigned to it by section four of the Customs and Inland Revenue Act, 1887.

2. *Short title.*—This Act may be cited as the Oil in Tobacco Act, 1900.

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